163-697

TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 133.

THE NEW ORLEANS CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 9, 1892.

(15,079.)

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana, City of New Orleans.

NEW ORLEANS CITY & LAKE RAILROAD COMPANY, Plaintiffs in Error,
vs.
CITY OF NEW ORLEANS, Defendant in Error. } No. 11032.

Buck, Dinkelspiel & Hart, Esquires, for plaintiffs in error; E. A. O'Sullivan, Esquire, city attorney, for defendant in error.

Writ of error to the supreme court of the State of Louisiana, returnable at the Supreme Court of the United States, in the city of Washington, D. C., on the 3rd day of July, 1892.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

NEW ORLEANS CITY AND LAKE R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 33564, Div. "C."

Petition. Filed August 5th, 1891.

To the honorable the civil district court for the parish of Orleans:

The petition of the New Orleans City and Lake Railroad Company, a corporation duly and legally established under the laws of this State, herein suing and appearing through Joseph A. Walker, president, thereunto duly authorized by resolution of the board of directors of said company, with respect shows: It is the successor, assignee, and transferee of the New Orleans City Railroad Company, and acquired as such successor and assignee all its rights, title, and franchises, asset claims, property, movable and immovable, *as* whatsoever kind, as per notarial act before W. O. Hart, notary public, dated June 9th, 1883, a printed copy contained in pamphlet "A," filed herewith, being hereto annexed and filed as part of this petition.

Shows that among said assets, rights, and properties were the following-described franchises and rights of ways to run and
2 operate street railways in the city of New Orleans, acquired, obtained, and purchased from said city of New Orleans for a valuable consideration, which will be hereinafter more specifically shown by said New Orleans City Railroad Company, in accordance with various ordinances, confirmed by a contract entered into before Gustave Le Gardeur, notary public in and for the parish of Orleans, dated the second day of October, 1879, which contract, also con-

tained in printed pamphlet "A," commencing at page 47 thereof, is annexed and filed as part of this petition, to wit:

1st. The right of way and franchise for the privilege of running street cars on what are known as the "Camp and Prytania lines," "the Magazine line," "the Rampart and Dauphine," "the Canal Street and Metairie Road line," "the Metairie Ridge and Bayou St. John line," and the "Esplanade and Bayou Bridge line," purchased from the city of New Orleans on October 2d, 1879, by act before G. Le Gardeur, Jr., notary public in this city, passed in accordance with ordinances Nos. 4968, 5020, & 6148, A. S., and omission supplied by ordinances 7127, A. S., adopted May 31st, 1881.

2d. The right of way and franchise for the privilege of running street cars on what is known as the "Slaughter extension," from Delery street over the Levee road or street through the Crescent City Stock Landing and Slaughter-house Company's premises, granted by ordinance No. 1682, A. S., adopted July 30th, 1872.

3d. The right of the exclusive use of the lake front of the revetment levee, situated between the end of the bridge of New canal and the bridge of the Upper Line canal, for the period of twenty-five years from the 27th of January, 1880, as per ordinance 6316, A. S., adopted that day.

4th. The right of use and occupancy of the buildings and other improvements erected on said lake front, and which revert to the city of New Orleans at the expiration of twenty-five years,
3 consisting of wharf, hotel, ball-room, pavilion, music stand, machine shop, depot, etc.

5th. The right and privilege of running trains propelled by steam power from the lake to the stand now established on Canal and Carondelet Sts., derived from ordinance of the city of New Orleans No. 3565, adopted June 13th, 1876, and No. 3617, adopted August 22d, 1876; No. 6528, adopted June 15th, 1880, and No. 6891, adopted March 3d, 1881.

Petitioner avers that all those franchises and rights of way had been owned, enjoyed, and operated by the New Orleans City Railroad Company under grants prior to that of October 2d, 1879, and said grants and sale under said contract *was*, in fact, a renewal and extension of grant of right of way of all the then existing street railways in their complete integrity and as publicly known.

Petitioner shows that said franchises or rights of way were purchased for a cash price and money paid at the execution of the contract of the sum of six hundred and thirty thousand dollars ($630,000), in addition to the assumption of enormous liability for the purpose of maintaining street crossings and bridges in good order and doing certain new work, all of which is set forth in said contract filed herewith as a part of this petition.

Petitioner shows that as successor and assignee of said New Orleans City Railroad Company it is in possession and operation of all its rights and franchises; that said New Orleans City railroad from the date of its contract and this petitioner from the date of its succession have been operating the various lines of street railways and maintained the same in good order and keep a full and complete

outfit of all the property, rolling stock, etc., to carry out the object of the contract.

Petitioner now further shows that in the ordinance directing the then administrator of commerce to advertise said purchases or right of way for sale in said advertisements and, finally, in the contract itself, under authority of said ordinance, the city of New Orleans bound herself "not to grant" during the period for which said franchises are sold a right of way to any other railway company on the streets through which said right of way is hereby sold unless by mutual agreement between the city and purchaser or purchasers of those franchises, all of which will appear from said contract of October 2nd, 1879, made part hereof.

And here petitioner now further shows that when said franchises hereinabove described, upon the expiration of the original grant to the New Orleans City Railroad Company, were offered for sale by the city of New Orleans the conditions thereof, and more especially said above-recited clause that the city would not grant during the period aforesaid a similar right of way to any one else embraced therein, were extensively advertised not only in this city, but in several large cities of the East and West, and said exclusive privilege, clause, or grant was expressly and intentionally published and made part of said contract for the purpose and with the expectation of eliciting large and profitable price or prices for said franchises; that the said sum of six hundred and thirty thousand dollars paid by this petitioner in cash was an enormous price therefor, which never would have been realized had not the city, as hereinabove recited, bound herself not to grant rights of way to competing parties through any of the streets embraced in the ordinances and contract referred to.

Petitioner now shows that notwithstanding said express contract and full consideration paid therefor the common council of the city of New Orleans, under provision of ordinance 5137, adopted February 24th, 1891, and ordinance 5176, adopted March 10th, 1891, has instructed the Hon. Otto Thoman, city comptroller, to advertise for sale at public auction, to the highest bidder, certain street-railroad franchises or privileges fully described in said ordinance, and said city comptroller has advertised and is continually advertising, as in such cases required by law, that the city would sell at public auction as aforesaid, on September 21st, 1891, at 12 o'clock m., said aforesaid railroad franchises, the full route of which is described in said official notice, taken from the official journal of the city of New Orleans, marked "C," and annexed and filed as part of this petition.

Petitioner shows that according to said ordinance and said publication the city, among other things, offers to sell a right of way for street-railroad purposes under a specification prepared by the city surveyor and approved by the city council in the ordinances aforesaid, a copy of which, marked "B," is also annexed and filed as part of this petition—a right of way on Magazine street from Canal St. to Felicity St.

The petitioner now shows that it is in actual operation of these

said rights of way, and that the said portion of Magazine street from Canal street to Felicity St. is a part and portion of the street or streets upon which said city of New Orleans bound herself not to grant rights of way to any other parties without petitioner's consent.

Petitioner now further shows that it acquired and operates this said railroad on the various streets named as a complete and connected system of street railways to and from various parts of the city, and any violation of the contract in the manner hereinabove set forth would not only injure, pecuniarily and otherwise, the company plaintiff and her business upon the particular street
6 upon which the violation occurs, but would impair the value and profit of the business throughout.

Petitioner avers that it has never consented to the proposed sale of a right of way on Magazine street; shows further that if the said sale as the city purports to make it is consummated and executed the injury to the company plaintiff during the unexpired term of its contract will exceed the sum of one hundred thousand dollars, exclusive of the depreciation of the properties and various roadbeds of the company, if the same could not be sold and delivered to successor with all the advantages for business and profitable investment now appertaining thereto.

Petitioner shows that in the nature of the business which would be injuriously affected as hereinabove set forth proof of exact damages would be difficult, if not impossible, and the violation of the contract herein completed by the city would cause irreparable injury and damages to at least the extent of one hundred thousand dollars, which can only be prevented by means of the equitable writ of injunction to which plaintiff herein is entitled.

Petitioner further shows that the legislation and future contemplated action thereunder of the city of New Orleans as hereinabove set forth impairs the obligations of the contract of this company with said city, in express violation of the laws and constitution of the State, particularly act 8, R. C. C., and article 155 of the constitution of the State of Louisiana, and in express violation of paragraph one (1), section 10, of article 1st, of the Constitution of the United States.

And petitioner further shows, if, as will be and has been contended by said city of New Orleans, that she has or had no legal rights or power to bind herself not to grant rights of ways to
7 other or competing parties, the petitioner avers that said right of way as acquired by petitioner was and became by such acquisition private property, which, having been acquired for valuable consideration, can be taken or impaired or damaged for some public purpose or necessity, and for compensation provisions made as provided (article 156, constitution of the State of Louisiana) and under exercise of the power of said eminent domain.

That such effort has not been made, and, as matter of fact, no useful public purpose or public necessity exists to justify said interference with private right and private property in the manner contemplated, and said proposed or contemplated sale is a slander upon

petitioner's rights, titles, and franchises, impairing the value of the stock and otherwise causing pecuniary damage.

Wherefore, the annexed affidavit and petition considered, petitioner prays that a writ of injunction issue herein restraining, enjoining, and prohibiting the city of New Orleans, through Joseph A. Shakespeare, its mayor, and said Hon. Otto Thoman, city comptroller, *for* continuing to offer for sale or selling, as in the petition set forth, any right of way whatsoever upon any of the streets named in the contract and embraced and hereinabove set forth, but more particularly enjoining from advertising for sale or proceeding any further in the execution of said ordinances Nos. 5137 and 5176, tending to a sale of a franchise or privilege or right of way for street-railway purposes or business on Magazine street from Canal St. to Felicity street.

And petitioner further prays that the city of New Orleans and said Hon. Otto Thoman, city comptroller, be served with a copy of this petition and be cited to appear and answer same, and that, after due proceedings, there be judgment making said injunction
8 perpetual, with costs, and for general relief.

And petitioner prays for such other and further aid, remedy, and relief as the nature of the case may require or law and equity permit; and, as in duty bound, etc., etc.

(Signed) BUCK, DINKELSPEIL & HART, *Att'ys.*

8*a* Pamphlet "A," annexed to petition, containing—
I. Contract, Oct. 2nd, 1879.
II. Contract, June 5th, 1883.

[Four Louisiana law stamps. Cancelled Jan. 25. Civil district court.]

[Endorsed:] No. 33564. Civil district court. N. O. City & Lake R. R. Co. *vs.* City of New Orleans. Offered in evidence by pl'ff. Produced, stamped, and filed January 25th, 1892. Joe Garidel, d'y clerk.

8*b* EXHIBIT "B."

Sale of the Right of Way and Franchises by the City of New Orleans to the New Orleans City Railroad Company.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this second day of the month of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the 104th—before me, Gustave Le Gardeur, Jr., a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned—personally came and appeared the Honorable Isaac W. Patton, mayor of the city of New Orleans, herein duly au-

thorized in the full execution of these presents, under and by virtue of resolution 6148, administration series, adopted by the council of the city of New Orleans on this 2d day of October, 1879, a certified copy whereof is hereto annexed for reference.

And also came and appeared Frederick Wintz, of this city, president of the New Orleans City Railroad Company, and duly authorized as such in the full execution of these presents, under and by virtue of the resolution adopted by the board of directors of the said company at their sitting of the 1st and 22d days of September, 1879, a certified copy whereof is hereto annexed for reference.

And the said Mayor Patton, in his said capacity, declared that on the 25th day of March, 1879, the council of the city of New Orleans adopted the following resolution, to wit:

No. 4968, administration series.

"Whereas, the franchises granted by the city of New Orleans to the New Orleans City Railroad Company for running certain lines of railroad will expire in 1880; and

"Whereas, it is necessary to give ample time to all parties who may desire to make bids or proposals for said franchises at
8c the expiration of the time for which said franchises were granted by the city: Therefore be it

"Resolved, That the administrator of commerce be, and is hereby, authorized to advertise until the first day of July, 1879, in the official journal of the city, and also in one journal in the cities of New York, Philadelphia, Boston, Chicago, and St. Louis, for sealed proposals for the franchises of the following-mentioned roads for a period of twenty-five years from the respective dates of the expiration of said franchises granted by the city of New Orleans to the New Orleans City Railroad Company, to wit: 1. The Magazine, Camp, Prytania, Rampart, and Dauphine lines, which expire on the 3d day of February, 1880. 2. The Canal Street and Metairie Road line, which expires on the 2d day of July, 1880; 3d. The Esplanade Street line, which expires on the 2d day of July, 1880.

"That the terms of said sale shall be set forth in specifications, to be drawn up by the administrator of commerce, with the approval of the council, and to be put on file in the office of the administrator of commerce as soon as practicable."

That on the 22d day of April, 1879, the council of the city of New Orleans adopted the following resolution, to wit:

No. 5020, administration series.

"Resolved, That ordinance No. 4969, administration series, be amended to read as follows:

"That the administrator of commerce be, and is hereby, authorized to advertise until the first day of September, 1879, in the official journal of this city, and also in one journal in the cities of New York, Philadelphia, Boston, Chicago, and St. Louis, for sealed proposals for the sale of the franchises of the railroad lines named therein from the respective dates of the expiration of said franchises

granted by the city of New Orleans up to the first day of January, 1906."

That in accordance with the provisions of said resolution No. 4968, administration series, the Honorable J. Henry Behan, administrator of commerce of the city of New Orleans, has published or caused to be published the following advertisement, to wit:

8d *Sale of the Franchises of the New Orleans City Railroad Company.*

DEPARTMENT OF COMMERCE, ROOM NO. 13,
CITY HALL, NEW ORLEANS, *May 19th*, 1879.

"Sealed proposals will be received at the office of the administrator of commerce, room No. 13, city hall, New Orleans, until 12 m. on the first day of September, 1879, for the right of way on the following railroads, to wit:

"SECTION 1. Camp and Prytania and Camp and Magazine Street lines, which expire on the third day of February, 1880.

"SECTION 2. Rampart and Dauphine, Canal Street and Metairie Ridge to Bayou St. John, and Esplanade and Bayou Bridge lines, which expire on the second day of July, 1880.

"The right of way to the purchasers of said franchises shall expire on the first day of January, 1906, and at the expiration of said time the said railroad cars, fixtures, and their appurtenances shall revert to the city on a valuation to be ascertained by two disinterested persons, one to be appointed by the purchaser or purchasers and the other by the city, and, in the event of a disagreement as to said valuation between said persons thus appointed, a third party or umpire shall be appointed by one of the district courts on the joint application of the parties; the decision thereby had to be final.

"That the city shall bind herself to transfer to the purchasers of each line of road, as per sections 1 and 2, the right of reversion, which the city now has, to purchase all the property of each line at an appraised value.

"That said franchises shall be sold for cash, the entire price to be paid by the purchaser or purchasers of the franchise or franchises at the time of the delivery of the said franchise or franchises.

"The delivery is made by the signing and delivery of the act of transfer and by placing the purchaser in actual possession.

"That the purchasers of said franchises shall keep in repair the streets and bridges through which the lines of road pass from curb to curb, under the directions of the administrator of improvements and the city surveyor.

8e "That the fares to be charged by said purchasers on their roads shall never exceed the amounts now charged, except as provided in the specifications herein referred to.

"Each bid shall be accompanied by a deposit or certified check of $50,000 as an evidence of their intention to abide by the adjudication; which amount shall be forfeited in case of failure to sign the

contract; and the same shall be held as a special deposit until the final delivery of said road and appurtenances.

"Bidders to whom the contract is not awarded shall have their deposits returned to them on the day adjudication is made. Bidders can bid for either franchise, say, for sections one and two, or both, at their option.

"Pamphlets containing specifications of contract can be obtained on application to the administrator of commerce.

"Proposals must be endorsed 'bids for the franchises of the New Orleans City railroad.'

"The city reserves the right to reject any and all bids, and the sale and adjudication shall not be considered as perfected and binding upon the city of New Orleans until the purchaser or purchasers shall have delivered, paid, and deposited the full amount of the price of the bid with whomsoever may be designated by the mayor to receive the same for and on behalf of the city; and until such deposit and payment of the price shall have been made and accepted by the council the adjudication shall not bind the city nor operate as an engagement or contract.

"(Signed) J. HENRY BEHAN,
"*Administrator of Commerce.*"

That in accordance with the foregoing advertisement sealed proposals for the franchises of the New Orleans City railroad were received up to 12 m. on Monday, the first day of September, 1879, at the office of the said administrator of commerce.

That on the same day, to wit, on the first day of September, 1879, the mayor and administrator met in committee of the whole in the mayor's parlor; that there and then the said sealed proposals were opened, and the proposal of the said New Orleans City Railroad Company for the sum of six hundred and thirty thousand dollars ($630,000) was found to be the highest.

8*f* That at the session of the city council on this Thursday, the second day of October, 1879, the bid or the proposal of the said New Orleans City Railroad Company for six hundred and thirty thousand dollars for the franchises of the New Orleans City railroad was accepted by the city council, and the mayor instructed to enter into and sign the necessary contract with the said New Orleans City Railroad Company, as fully appears by the said resolution, No. 6148, administration series, adopted by the council of the city of New Orleans on this second day of October, 1879, a certified copy whereof is hereto annexed for reference as aforesaid.

Now, therefore, the said mayor, Isaac W. Patton, declared that, in consideration of the foregoing and by virtue of the power in him vested by the said resolution, No. 6148, administration series, he does by these presents in his said capacity and for and on behalf of the city of New Orleans grant, bargain, sell, convey, transfer, assign, and set over unto the said New Orleans City Railroad Company, the said Frederick Wintz, as president aforesaid, accepting and purchasing for and in the name of the said New Orleans City Railroad

Company and acknowledging due delivery and possession of all the property, cars, fixtures, and other appurtenances thereunto belonging or in anywise appertaining—

The right of way and franchises of the following railroads, to wit:

SECTION 1. Camp and Prytania and Camp and Magazine Streets lines, for the full term and period commencing on and to be computed from the third day of February, 1880, and to end on the first day of January, 1906.

SEC. 2. Rampart and Dauphine, Canal Street and Metairie Ridge to Bayou St. John, and Esplanade and Bayou Bridge lines, for the full term and period commencing on and to be computed from the second day of July, 1880, and to end on first day of January, 1906:

To have and to hold the said right of way and franchises of the said railroad lines and the right of reversion of the city to purchase all the property of each line unto the said New Orleans City
8g Railroad Company, its successors and assigns, transferees and vendees, for the full term and period hereinabove fixed and determined by these presents.

This sale is made and accepted in accordance with the specifications on file in the office of the administrator of commerce, which said specifications are in the words and figures following, to wit:

Specifications concerning the sale of the right of way and franchises for a term of years expiring on the first day of January, 1906, as per ordinances Nos. 4968 and 5030, administration series, hereunto annexed, of the following street railroads of the New Orleans City Railroad Company, to wit:

"Camp and Prytania, Camp and Magazine, Rampart and Dauphine, Canal Street and Metairie Road to Bayou St. John, and Esplanade and Bayou Bridge lines."

"Section first.

"Camp and Prytania Streets line, Camp and Magazine Streets line.

"Section second.

"Rampart and Dauphine, Canal Street and Metairie Road to Bayou St. John, Esplanade and Bayou Bridge. The Camp and Prytania, Camp and Magazine, and Rampart and Dauphine Streets lines expire on the third day of February, 1880. (See ordinance No. 4945, attached.)

"The Canal Street and Metairie Road and the Esplanade and Bayou Bridge lines expire on the second day of July, 1880. (See ordinance No. 5244, attached.)

"The above-mentioned roads run on the following streets:

"First section.

"Comprises the following roads passing through the streets hereinafter named, with tracks, turnouts, and turn-tables, viz:

"The Camp and Prytania and Camp and Magazine lines.

"Three tracks on Canal street from St. Charles to Camp street; single track on Canal street from Magazine to Camp street; single track on Magazine from Canal street to St. Andrew street; double track on Magazine from St. Andrew to Toledano street; double track on Prytania from Poeyfarre to Toledano street; single
8*h* track on Camp street from Poeyfarre to Canal street; single track on Poeyfarre street from Magazine to Camp street; single track on Toledano street from Camp to Prytania street.

"Second section.

"Comprises the following roads passing through the streets hereinafter named, with the tracks, turnouts, and turn-tables:

"Rampart and Dauphine Streets lines.

"Double track on Rampart street from Canal street to Esplanade street; a single track on Dauphine street from Esplanade to Poland street; a single track on Rampart street from Esplanade to Poland street; a double track on Poland street from Dauphine to Rampart street; a double track on Dauphine street from Poland street to Caffin's lane; a single track on Dauphine street from Caffin's lane to Delery street, with the right of a double track.

"Canal street and Metairie road to Bayou St. John.

"A double track on Canal street from Carondelet street to Metairie road, along Metairie road to New canal; four tracks on Canal street from St. Charles to Carondelet street; double track on Metairie ridge from New canal to Carondelet canal or Bayou St. John.

"Esplanade and Bayou Bridge lines.

"Double track on Esplanade street from Rampart street to Bayou St. John; double track on Esplanade street from Levee to Rampart street. (See ordinance No. 2518, attached.) All these rights revert to the city at the expiration of the twenty years, to wit, the third day of February and the second day of July, 1880."

"'Ordinance No. 4945, old series.

"'Resolved, That the adjudication made by the controller on the twentieth day of January, 1860, of the right of way to establish railroads in the city of New Orleans, under and by virtue of resolutions Nos. 4364, 4474, 4735, and 4766, to J. B. Slawson—securities, Henry Hart, F. Wintz, and P. Irwin—for and in consideration of $130,000 bonus offered by him, be, and the same is hereby, approved, the securities accepted, and the mayor authorized to sign the necessary act or acts with the said parties.'

"'Ordinance No. 5244, old series.

"'Resolved, That the following adjudications made by the
8*i* controller on the second of June, 1860, be, and the same are hereby, approved, and the securities accepted, viz:

"'First. Under resolution No. 5122, the right of way for a railroad on Canal street from Rampart street to the Metairie ridge, to J. B. Slawson & Co.; security, Henry Hart, P. Irwin, and Frederick Wintz, for $500 bonus.

"'Second. Under resolution No. 5119, the right of way for railroad on Esplanade street from Rampart street to Bayou St. John, to J. B. Slawson & Co.; security, Henry Hart, Patrick Irwin, and Frederick Wintz, for $500 bonus.

"'Resolved further, That the mayor be, and he is hereby, authorized to sign the necessary act or acts with the said parties for the performance of the work.'

"'Ordinance No. 2518, administration series.

"'An ordinance granting to the City Railroad Company the right of way for a railroad on Esplanade street to connect the Esplanade and Bayou line of the New Orleans City Railroad Company with the Levee line, and other purposes.

"'Be it ordained by the city council, That for and in consideration of the sum of one thousand dollars in United States currency, to be immediately paid into the city treasury, there be, and is hereby, granted to the New Orleans City Railroad Company the right of way and privilege of constructing and laying a double-track railroad on Esplanade street, to extend from the junction of Rampart to Peters or Levee street for the purpose of connecting the Esplanade and Bayou line with the Levee line of said company: the tracks, cars, equipments, management, and regulations to conform to and be identical with the roads to be connected. Said grant of right of way shall continue during the continuance of the charter of the New Orleans City Railroad Company and shall terminate therewith. The track shall be laid in accordance with the specifications to be furnished by the city surveyor.'

"'The purchaser or purchasers shall be bound to keep the paved or unpaved streets through which said tracks pass, as well as all the bridges on said streets, in good repair and condition from curb to curb during the continuance of their privilege and right of way.

8j "'They shall, on proper notification from the administrator of improvements and the city surveyor, raise, repair, and repave any or all intersections of streets when required, upon lines and levels to be furnished by the city surveyor.

"'They shall be required to widen and deepen any or all culverts and sluices to such dimensions as may be required and directed by the city surveyor. They shall be required to keep all bridges in repair and make new ones when required by the administrator of improvements and the city surveyor on all the streets through which their lines pass.

"'The lines of said tracks within the rails shall be paved with round stone, except where square-stone pavements exist or may hereafter be made, in which case the same material shall be used for paving within rails. When the paving of the streets, where the

same are paved, as well as the shelling of the streets where the same are shelled, shall be taken up for the purpose of repair, they shall be replaced in the same condition as formerly, and the streets graded to a proper grade to be furnished by the city surveyor. Wherever the streets are not yet paved the lines of the tracks, within the rails, shall be paved with either round stones or with four by five inch scantling in the best workmanlike manner, and the space between the lines of track and the gutters of the streets shall be flanked with yellow-pine planks three inches thick, laid on stringers of four inches thick by eight inches wide; the timber used to be of the best quality and to the entire satisfaction of the administrator of improvements and city surveyor. The rails shall be of the same pattern as those now in use. The cross-ties shall be of yellow pine, six by eight inches and eight feet long, the string-pieces of yellow pine five by eight inches, all of the best quality of lumber and to the entire satisfaction of the administrator of improvements and city surveyor.'

"Should the purchaser or purchasers at any time refuse to comply with any or all the requirements of these specifications or fail to comply with the notifications of the administrator of improvements and the city surveyor or refuse or neglect to keep the streets and bridges in good order and condition, he or they or their authorized representatives shall be subject to a fine of $25 or thirty days imprisonment for each and every offense, at the discretion of
8k the court; said fine to be recoverable before the recorder of the municipal district in which the offense was committed.

"The fare on the Camp and Magazine line between Canal and Toledano streets or for any lesser distance between those points shall not exceed five cents *for* passenger either way, except as is hereinafter provided.

"The fare on the Camp and Prytania line between Canal and Toledano streets shall not exceed five cents per passenger either way, except as hereinafter provided.

"The fare on the Rampart and Dauphine line between Canal street and the United States barracks shall not exceed five cents per passenger either way, except as hereinafter provided.

"The fare on the Canal Street and Metairie Road line from neutral ground on Canal street, between Carondelet and St. Charles, to Metairie ridge or cemeteries shall not exceed five cents per passenger either way, except as is hereinafter provided.

"The fare on the Esplanade and Bayou Bridge line from Canal street to Bayou bridge shall not exceed five cents per passenger either way, except as hereinafter provided.

"They shall further be allowed to charge five cents from the New canal to Bayou St. John, on the Ridge line.

"The style of cars used to be the same as those now in use, unless some improved and advantageous pattern is introduced during the existence of this contract, when, upon application to and approval by the council, the same may be changed.

"The cars shall be drawn by horse or mule power, and if more

than one horse or mule be used for each car, they shall be driven abreast.

"Said cars shall be run as often during the day or night as the purchasers may deem proper, but not at greater intervals than every ten minutes from daylight to 10 o'clock p. m., and every fifteen minutes from 10 o'clock until 12.30 o'clock a. m., and every hour thereafter until daylight on the Camp and Magazine, the Camp and Prytania, the Rampart and Dauphine to Poland street, the Esplanade and Bayou Bridge, and the Canal and Ridge line to Broad Street station. For each and every fare after 12.30 o'clock they shall be allowed to charge twenty-five cents.

8*l* "Said purchaser or purchasers shall annually pay into the city treasury, upon the assessed value of said road and fixtures, the annual tax levied upon real estate; the value of said road and fixtures to be assessed by the usual mode of assessment. The speed of said cars shall not exceed six miles per hour. All cars that may be run on said railroads between sunset and daybreak shall be provided with a good and ample headlight placed in a conspicuous position in and on said cars, and for the violation of this or any other ordinance now existing or that may hereafter be enacted in accordance with the provisions of these specifications on the part of any officer or employee of said roads, the purchaser or purchasers shall be liable to all fines and damages arising therefrom.

"The city binds herself to transfer to the purchaser or purchasers of the franchises of the New Orleans City railroad, as herein set forth, the right of reversion which the city now has to purchase all the property, cars, fixtures, and other appurtenances of each line at an appraised value, in accordance with the following section of their present contract, to wit:

"'The said railroads, cars, fixtures, and other appurtenances shall revert to the city at the expiration of the said twenty years' privilege on a valuation to be ascertained by two disinterested persons, one to be appointed by the purchaser or purchasers and the other by the city; and in the event of a disagreement as to said valuation between said persons a third party or umpire shall be appointed by one of the district courts, the decision thereby had to be final.'

"The rights of way are for street railroads carrying passengers only.

"It is understood that the purchaser or purchasers are allowed to make such turnouts and crossings as may be necessary, on the streets through which they have the right of way, on lines and levels to be furnished by the city surveyor.

"The city of New Orleans binds herself not to grant, during the period for which said franchises are sold, a right of way to any other railroad company upon the streets through which said right

8*m* of way is hereby sold, unless by mutual agreement between the city and the purchaser or purchasers of these franchises.

"The purchaser or purchasers are not to change any of the tracks

from the lines and levels now existing without the consent of the city council.

"The city reserves the right to limit the running of steam trains on Canal street to any part where the council may deem it expedient and necessary in the interests of the property-holders or the community at large.

"The city reserves the right to reject any and all bids, and the sale and adjudication shall not be considered as perfected and binding upon the city of New Orleans until the purchaser or purchasers shall have delivered, paid, and deposited the full amount of the price of the bid with whomsoever may be designated by the mayor to receive the same for and on behalf of the city; and until such deposit and payment of the price shall have been made and accepted by the council the adjudication shall not bind the city nor operate as an engagement or contract.

"(Signed) J. HENRY BEHAN,
"*Administrator of Commerce.*"

And now the said Frederick Wintz, as president aforesaid, declared that he does, by these presents, in his said capacity, bind and obligate the said New Orleans City Railroad Company, its successors, assigns, transferees, and vendees, at all times, to abide by, comply with, conform to, and observe all and singular the terms, conditions, clauses, stipulations, regulations, and penalties of the said specifications, and to enjoy and exercise the herein-conveyed right of way strictly in accordance with the said specifications.

This sale, in conformity with the proposal made by the said New Orleans City Railroad Company and accepted by the city of New Orleans, is made and accepted, for and in consideration of the price and sum of six hundred and thirty thousand dollars, for the full term and period hereinabove fixed and determined, payable cash.

Now, therefore, in conformity with the terms of the present sale, and it being the true intent of the city to make delivery hereby, and the said New Orleans City Railroad Company being
8n in full possession and acknowledging, *as* the said Frederick Wintz, as president aforesaid, does hereby acknowledge, for and in the name of the said New Orleans City Railroad Company, due delivery of all the property, cars, fixtures, and other appurtenances belonging or in anywise appertaining to said railroad lines, the said Frederick Wintz, as president of the said New Orleans City Railroad Company, has paid cash the said sum of six hundred and thirty thousand dollars ($630,000) into the department of finance of the city of New Orleans, as appears by the receipt of the administrator of finance, hereto annexed for reference.

And the said mayor, Isaac W. Patton, declared that by virtue of the authority in him vested by the said resolution No. 6148, administration series, he does, by these presents, in his said capacity, and for and in the name and on behalf of the city of New Orleans, acknowledge that the payment of the said purchase price has been duly made by the said New Orleans City Railroad Company; that

he does hereby accept the payment of the said purchase price and give full and ample acquittance and discharge for the same.

Thus done and passed in New Orleans, at my office, the day, month, and year first above written, in the presence of Minor Martin Elmore and William H. Hyatt, competent witnesses, who have signed with the said parties and me, notary, after reading the whole.

(Original signed)

I. W. PATTON,
Mayor City of New Orleans.
F. WINTZ,
President N. O. City R. R. Co.
MINOR M. ELMORE.
WILLIAM H. HYATT.
G. LE GARDEUR, JR.,
Notary Public.

A true copy of the original on file and on record in my office. New Orleans, Oct. 3d, 1879.

G. LE GARDEUR, JR.,
Notary Public.

80 EXHIBIT "C."

Sale and Transfer from New Orleans City Railroad Co. and New Orleans City and Lake Railroad Co.

STATE OF LOUISIANA,
Parish of Orleans.

Be it known that on this ninth day of June, in the year one thousand eight hundred and eighty-three, before me, William Octave Hart, a notary public in and for this parish and State, duly commissioned and sworn, personally came and appeared Messrs. Albert Baldwin, Charles E. Black, and Hypolite Gally, all of this city, and herein appearing and acting as the liquidating commissioners of the New Orleans City Railroad Company, late a corporation of this city and State, organized by act before Edward Barnett, late a notary public in this city, on June 15th, 1860, said commissioners being appointed at a general meeting of the stockholders of said company, held May 15th and 16th, 1883, as will more fully appear by reference to a duly certified copy of the resolution adopted at said meeting, made part hereof and hereto annexed.

And the said appearers severally declared that, by virtue of the power vested in them by said resolution, they do hereby grant, bargain, sell, assign, transfer, convey, abandon, set over, and deliver, with all legal warrantees and with substitution and subrogation to all rights and actions of warranty against former owners and possessors, unto "the New Orleans City and Lake Railroad Company," a legal corporation of this city and State, organized by act before the undersigned notary, May 17th, 1883, and herein represented by Brownlee W. Taylor, Isaac L. Lyons, and Richard M. O'Brien, the committee named in article nine of its charter, as well as by its

president, Joseph A. Walker, and its secretary, William E. Leverich, all here present, accepting, and purchasing for said company, its successors and assigns, and acknowledging due delivery and possession thereof, all and singular the property of said late New Orleans City Railroad Company, real and personal, movable and immovable, as hereinafter described.

Real Estate.

1st. A certain square of ground, together with all the im-
8*p* provements thereon, rights, ways, privileges, and appurtenances thereto belonging or in anywise appertaining, situated in the second district of this city, and comprised within Canal, Custom-house, Dupre, and White streets, and designated by the number thirty on a plan drawn by L. Surgi, surveyor, dated 31st of December, 1849, and deposited in the office of O. H. Perry, late a notary in this city. Said square measures two hundred and eighty-three feet four inches seven lines on Canal street, a like measurement on Custom-house street, three hundred and thirteen feet four inches on Dupre street, and a like measurement on White street; which said property was purchased by the said New Orleans City Railroad Company by act passed before Theodore O. Stark, late notary in this city, July 20th, 1860, from W. A. Bell.

2d. Eight lots of ground, adjoining each other, situated in the Second district of this city, and designated by the numbers five, six, seven, eight, nine, ten, eleven, and twelve, in a portion of ground which is bounded on two sides by the old shell road of Bayou St. John and on a third side by Esplanade street, four of which lots—the numbers six, seven, ten, and eleven—are fronting on Esplanade street, and the four others—numbers five, eight, nine, and twelve—are fronting on said old shell road, which four first lots adjoin the four others in the rear; and the said eight lots, agreeably to a plan drawn by C. A. de Armas, dated 18th May, 1859, and deposited in the office of Jos. Cuvillier, notary, have the following dimensions, in American measure, to wit: Lot number five measures thirty-two feet one inch and four lines front on the old shell road of Bayou St. John; two hundred and twenty-seven feet ten inches and five lines in depth on the line dividing it from lot number four, two hundred and twenty-eight feet seven inches and one line on the line dividing it from lot number eight, and thirty-two feet five inches and a half line on the rear line.

Lot number eight measures thirty-two feet one inch and four lines front on the old shell road of Bayou St. John, two hundred and twenty-eight feet seven inches and one line on the line dividing it
from lot number five, two hundred and twenty-nine feet three
8*q* inches and five lines on the line dividing it from lot number nine, and thirty-two feet five inches and one-half line on the rear line.

Lot number nine measures thirty-two feet one inch and four lines front on said old shell road, two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot number eight,

two hundred and thirty feet one line on the line dividing it from lot number twelve, and thirty-two feet five inches and one-half line on the rear line.

Lot number twelve measures thirty-two feet one inch and five lines front on the line dividing it from lot number nine, and two hundred and thirty feet eight inches and five lines on the line dividing it from the property lately belonging to the late A. Vignes, and thirty-two feet five inches and one line and a half on the rear line.

Lot number eleven measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and thirty feet eight inches and six lines in depth on the line dividing it from lot number thirteen, two hundred and thirty feet one line in depth on the line dividing it from lot number ten, and thirty-two feet five inches and one line and a half on the rear line.

Lot number ten measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and thirty feet one line in depth on the line dividing it from lot number eleven, two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot number seven, and thirty-two feet five inches and one-half line on the rear line.

Lot number seven measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot number ten, two hundred and twenty eight feet seven inches and one line on the line dividing it from lot number six, and thirty-two feet five inches and one-half line on the rear line.

And lot number six measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and twenty-eight feet seven inches and one line in depth on the line dividing it from lot number seven, and two hundred and twenty-seven feet ten
8r inches and five lines in depth on the line dividing it from lot number three, and thirty-two feet five inches and a half line on the rear line.

Which said property was purchased by the said New Orleans City Railroad Company from the Church of St. Louis of New Orleans by an act passed before said notary, Cuvillier, on November 22d, 1860.

3d. A certain lot or parcel of ground of irregular dimensions, together with all the buildings and improvements thereon, situate in the square bounded by Nayades, or St. Charles, Pleasant, Toledano, and Prytania streets, in the Fourth district of this city, and measuring six feet front on said Nayades or St. Charles street, two hundred and eighty-six feet seven inches front on said Pleasant street, two hundred and eighty-seven feet six inches front on said Toledano street, and twenty-six feet on the rear line.

Which said property was purchased by the said New Orleans City Railroad Company from E. J. Hart by an act passed before William L. Poole, notary on March 8th, 1861.

4th. "A." Seven lots of ground situated in the square number fourteen, which is bounded by Pleasant, Harmony, Camp, and

Magazine streets, designated by the numbers one, two, three, four, five, six, and seven on a plan drawn by C. A. Hedin, surveyor, on the 27th November, 1849, and deposited as plan No. 180 in the office of Theodore Guyol, notary public, in this city. Lots numbers one, two, three, and four adjoin each other and measure each thirty feet front on Magazine street by one hundred and fifteen feet in depth between parallel lines, lot number four forming the corner of Magazine and Pleasant streets, and lots numbers five, six, and seven adjoin each other, and measure each thirty feet in front on said Pleasant street by one hundred and twenty feet in depth between parallel lines.

"B." A certain lot of ground situated in the said square number fourteen, designated by the letter A on a sketch dated the 23d of June, 1852, and annexed to an act passed before L. R. Kenny, then notary in this city, on the 25th of June, 1852. Said lot measures thirty feet front on Pleasant street between Magazine and Camp streets by a depth of one hundred and twenty feet between
88 parallel lines, American measure, and is composed of the rear part of lots numbers eight, nine, ten, and eleven of said square according to the above-mentioned plan of C. A. Hedin.

"C." Four certain lots of ground situated in the said square number fourteen, designated by the letters "B, C, D, and E," on a sketch paraphed "*ne varietur*" and annexed to an act passed before J. F. Coffey, notary, on the 24th day of March, 1859. Said lots adjoin each other and measure each thirty feet front on Camp street by a depth of eighty-five feet between parallel lines, said lot "B" forming the corner of Camp and Pleasant streets; which said four lots of ground form the greater parts of lots designated by the numbers eight, nine, ten, and eleven on the said above-mentioned plan by C. A. Hedin.

"D." Five certain lots of ground situated in the said Fourth district, in the square number thirteen, comprised within Pleasant, Magazine, Camp, and Toledano streets, designated by the numbers seven, eight, nine, ten, and eleven on a plan drawn by C. A. Hedin, dated the 21st day of February, 1849, and deposited in the office of L. R. Kenny, then notary, and measuring as follows, to wit: Lot number seven measures twenty-nine feet one inch and one-eleventh in front on Pleasant street by a depth of one hundred and nineteen feet four inches and one-fourth lines of the line nearest to Magazine street and by a depth of one hundred and seventeen feet five inches and one line and five-elevenths on the line of lot number six.

Lots numbers eight, nine, ten, and eleven adjoin each other and measure each thirty-one feet nine inches and four lines front on Magazine street by the following depths, to wit: Lots numbers eight, nine, and ten, each one hundred and sixteen feet four inches and four-elevenths between parallel lines, and lot number eleven, one hundred and sixteen feet four inches and four-elevenths on the line of lot number ten and one hundred and seventeen feet two inches seven and three-fourths lines on the line of Suburb plaisance, now Toledano street, the whole American measure.

"E." Three lots of ground situated in the said square number

thirteen, designated by the numbers four, five, and six on said above-mentioned plan drawn by C. A. Hedin on the 21st
8t February, 1849, adjoining each other and measuring each twenty-nine feet one inch and one-eleventh front on said Pleasant street, twenty-nine feet three inches and five lines and nine-elevenths in width in the rear by the following depths, to wit:

Lot number six, one hundred and fifteen feet five inches six lines and six-elevenths.

Lot number five, one hundred and thirteen feet six inches three lines and seven-elevenths, and lot number four, one hundred and eleven feet seven inches and eight-elevenths.

"F." Three certain lots of ground situated in the said square number thirteen, designated by the numbers one, two, and three, on said above-mentioned plan drawn by C. A. Hedin on the 21st February, 1849, and measuring as follows, to wit: Lot number one, forming the corner of Camp and Pleasant streets, measures twenty-nine feet one inch and one-eleventh in front on Pleasant street, one hundred and five feet nine inches deep and front on Camp street, one hundred and eight feet seven inches and ten-elevenths in depth on the line of lot number two, and twenty-nine feet three inches and five lines and nine-tenths in width in the rear.

Lot number two measures twenty-nine feet one inch and one-eleventh front on Pleasant street, one hundred and seven feet eight inches and ten-elevenths deep on the line of lot number one, one hundred and nine feet seven inches and nine-elevenths deep on the line of lot number three, and twenty-nine feet three inches and five lines and nine-elevenths in width in the rear, and lot number three measures twenty-nine feet one inch and one-eleventh front on Pleasant street, one hundred and nine feet seven inches and nine-elevenths in depth on the line of lot number two, one hundred and eleven feet seven inches and eight lines on the line of lot number four, and twenty-nine feet three inches and five and nine-elevenths lines in width in the rear, American measure, together with all the buildings and improvements thereon, rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining.

Which said property was purchased by the said of New Orleans City Railroad Company from Henry Hart and Frederick
8u Wintz by an act passed before Edward Barnett, late notary in this city, on the 20th of March, 1861.

5th. A certain lot of ground situated in the Fourth district of this city, designated by lot number one, of square bounded by Toledano, Pleasant, Nayades, (now St. Charles), and Prytania streets, and measuring thirty-two feet eight inches, more or less, in front on Prytania street by one hundred and fifty feet deep and front on Pleasant street, and about twenty-six feet on the rear line dividing it from lot number two, as per plan drawn by Adl. Knell, architect and civil engineer, dated the 11th October, 1851, and deposited in the office of Ant. Doriocourt, notary in this city, a sketch of which said plan is thereunto annexed for reference to the act of purchase.

Which said property was purchased by the said New Orleans City

Railroad Company from Joseph Llado, by an act passed before Edward Barnett, late notary in this city, on March 20th, 1861.

6th. A certain square of ground situate, lying and being in the Third district of this city, bounded by Goodchildren, Love, Poland, and Lesseps streets, and having, English measure, two hundred and seventy-seven feet eight inches in front on Goodchildren street, the same front on Love street, three hundred and ninety-six feet three inches in front of Lesseps street, and the same front on Poland street, as per plan of Foubourg Washington, drawn by Joseph Pilié, city surveyor, under date of the 25th of February, 1832, deposited in the office of Charles Janin, late notary public in this city, on the fifth of March following, together with all the rights, privileges, and advantages thereunto belonging or in anywise appertaining.

Which said property was purchased by the said New Orleans City Railroad Company from Charles A. Barriere and Wm. S. Toole, by an act passed before Edward Barnett, late notary in this city, on March 30th, 1861.

7th. Four lots of ground adjoining each other, situate in the Second district of this city, designated by the numbers one, two, three, and four, in a portion of ground bounded on both sides by the Bayou St. John and on the third side by Esplanade street, which lots of ground measure in American measure, as follows,
8v to wit: Lot number one, thirty-two feet one inch five lines front on the old shell road by two hundred and twenty-six feet five inches five lines in depth on the line dividing it from Mr. Musgrove's property; lot number four, thirty-two feet one inch four lines front on the old shell road by a depth of two hundred and twenty-seven feet two inches one line on the line dividing it from lot number one, and two hundred and twenty-seven feet ten inches five lines in depth on the line dividing it from lot number five; lots numbers two and three measure each thirty-two feet seven inches two lines front on Esplanade street by a depth as follows: Lot number two, of two hundred and twenty-six feet five inches and six lines on the line dividing it from Mr. Musgrove's property; lot number three, two hundred and twenty-seven feet two inches and one line on the line dividing it from lot number two, and two hundred and twenty-seven feet ten inches and five lines on the line dividing it from lot number six. Said lots numbers one, two, three, and four are contiguous to each other on their rear lines—

Agreeably to a plan drawn by Chas. A. de Armas, dated 18th May, 1859, and deposited in the office of J. Cuvillier, notary, for reference, together with all the buildings and improvements thereon and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining.

Which said property was purchased by the said New Orleans City Railroad Company from Henry Willett by an act passed before Edward Barnett, late notary in this city, on 22d September, 1854.

8th. A certain square of ground, with the improvements thereon, situate in the Second district of this city and designated by the number thirty-one on a plan drawn by L. Surgi, surveyor, on the 31st

December, 1849, and deposited in the office of O. H. Perry, late a notary public in this city.

Which said square is bounded by Dupre, White, Custom-house, and Bienville streets, and is subdivided into twenty-two lots.

Which said property was purchased by the said New Orleans City Railroad Company from German Society of New Orleans by an act passed before Theo. Guyol, notary, on June 13th, 1877.

8w 9. That portion of ground situate on the shore of Lake Pantchartrain, on the left side of the New canal, going to said lake, and in front of lots numbers ten, eleven, twelve, thirteen, fourteen and fifteen, on a plan drawn by W. H. Williams, surveyor and engineer, on the twentieth day of April, eighteen hundred and seventy-one, and deposited in the office of Theo. Guyol, notary in this city, as plan I, the said portion of ground commencing from the line of division between lots numbered eight and nine of said plan—that is to say, at a distance of one hundred feet from the corner of Mercer street, thence extending along Lake avenue about nine hundred and ten feet to the division line between the property of the New Orleans Canal and Banking Company and that of Hazeur Brothers by a depth running to the lake, together with all the rights of accretion in front of said portion of ground and all the rights, claims, and privileges to which the said New Orleans Canal and Banking Company was entitled as front proprietors.

Which said property was purchased by the said New Orleans City Railroad Company by act before Theo. Guyol, March 9th, 1881, from said banking company.

Right of way and franchises.

1st. The right of way and franchise for the privilege of running street cars on what are known as the "Camp and Prytania line," the "Magazine line," the "Rampart and Dauphine line," the "Canal Street and Metairie Road line," the "Metairie Ridge and Bayou St. John line," and the "Esplanade and Bayou Bridge line," purchased from the city of New Orleans October 2d, 1879, by act before G. Legardeur, Jr., notary public in this city, passed in accordance with ordinances Nos. 4968, 5020, and 6148, A. S., and omission supplied by ordinance 7127, A. S., adopted May 31st, 1881.

2d. The right of way and franchise for the privilege of running street cars on what is known as the extension of the "Camp and Prytania line," as per contract with the city of New Orleans, passed before Joseph D. Taylor, notary public in this city, on February 27th, 1883, passed in accordance with ordinance No. 54, council series.

8x 3d. The right of way and franchise for the privilege of running street cars on what is known as the extension of the "Magazine line," as per contract with the city of New Orleans, passed before Joseph D. Taylor, notary public in this city, on May 15th, 1883, passed in accordance with ordinances Nos. 248 and 276, council series.

4th. The right of way and franchise for the privilege of running street cars on what is known as the "Levee and Barracks line," purchased from the city of New Orleans June 9th, 1862, by act before C. E. Fortier, late notary in this city, passed in accordance with ordinances Nos. 6033 and 6053, old series, amended by ordinances Nos. 6322 and 6405, old series, and 490 and 1506, new series.

(NOTE.—Under these ordinances this right of way exists until June 8th, 1897.)

5th. The right of way and franchise for the privilege of running street cars on what is known as the "Slaughter-house extension," from Delery street over the Levee road or street to the Crescent City Live Stock Landing and Slaughter-house Company's premises, granted by ordinance No. 1682, A. S., adopted July 30th, 1872.

6th. The right of the exclusive use of the lake front of the revetment levee situated between the end of the New canal and the bridge of the Upper Line canal, for the period of twenty-five years from January 27th, 1880, as per ordinance No. 6316, A. S., adopted that day.

7th. The right of use and occupancy of the buildings and other improvements erected on said lake front and which revert to the city of New Orleans at the expiration of said twenty-five years, consisting of wharf, hotel, bar-room, pavilion, music stand, machine shop, depot, etc.

8th. The right and privilege of running trains propelled by steam power from the lake to the stand now established on Canal and Carondelet streets, derived from ordinances of the city of New Orleans No. 3565, adopted June 13th, 1876, and No. 3617, adopted August 22d, 1876; No. 6528, adopted June 15th, 1880, and No. 6891, adopted March 3d, 1881.

(NOTE.—These last three ordinances are to be construed together, and as the right to run said steam trains on Canal street, be-
8y tween Basin and Carondelet streets, is now in contest, the transfer of this right is made without warranty. See F. W. Tilton *et als. vs.* New Orleans City Railroad Company, No. 8613, supreme court of Louisiana.)

Also from contract with the city, passed before G. Le Gardeur, notary, on July 1st, 1878, and from act of consolidation with the New Orleans, Metairie and Lake Railroad Company, of date December 21st, 1875, and January 12th, 1876, deposited with the secretary of state January 24th, 1876, said New Orleans, Metairie and Lake Railroad Company being incorporated by act of the legislature No. 133, approved April 20th, 1869.

Rolling stock, live stock, etc.

1st. Six hundred and forty-five mules.
2d. Twenty-seven ponies.
3d. One hundred and forty-eight cars.
4th. Nine engines.

5th. Forty coaches.

6th. Seven floats, twelve carts, one dray, two baggage cars, three wagons, and two flat cars.

7th. Feed and harness.

8th. Contents of blacksmith, harness, and machine shops at Magazine, Canal, Bayou Road, and Poland stations.

9th. Machinery for electric light at West End.

10th. Furniture at West End hotel, and office furniture, iron safes, stationery, etc., at 102 Canal street, second floor.

Road-bed.

Track aggregating about fifty miles, including cross-ties, stringers tie-rods, rails, etc., running on the following streets:

1st. "Magazine line."—Double track on Canal street from Exchange place to Camp street, and on Magazine street, from Toledano street to St. Andrew street; single track on Camp and Magazine streets, from Canal street to St. Andrew street, and on Canal street, from Magazine street to Camp street.

2d. "Prytania line."—Double track on Prytania street from its junction with Camp street to Upper Line street, on Upper Line street, from Prytania street to Pitt street, on Pitt street, from Soniat street to Upper Line street, on Dufossat street, from St. Charles street to Boudousquie street; single track on Pitt and Boudousquie, from Soniat to Dufossat, and on Soniat and Dufossat, from Boudousquie to Pitt street.

8z

3d. "Rampart and Dauphine line."—Double track on Rampart street, from Canal street to Esplanade street, on Poland street from Dauphine street to Rampart street, on Dauphine street, from Poland street to Delery street, on Levee, from Delery street to Slaughterhouse; and single track on Dauphine street, from Esplanade street to Poland street, and on Rampart street between same streets.

4th. "Canal Street and Metairie Road line."—Double track on Canal street, from St. Charles street to Metairie road.

5th. "Metairie Road and Bayou St. John line."—Double track on Metairie ridge, from New canal to Carondelet canal or Bayou St. John.

6th. "Esplanade and Bayou Bridge line."—Double track on Esplanade street, from Rampart street to Bayou St. John.

7th. "Esplanade and French Market line."—Double track on Esplanade street, from Levee street to Victory street, and from Bourbon street to Rampart street.

8th. "Levee and Barracks line."—Double track on Canal street, from Decatur street to North Peters street, on North Peters street, from Canal street to Enghein street, Enghein street, from North Peters to Chartres street, Poland street, from Dauphine street to Royal street; single track on Chartres street, from Enghein street to Poland street, on Poland and Enghein streets, from Royal to Chartres street, Royal street, from Poland street to Enghein street.

9th. "West End line."—Double track along the New canal from end of Canal Street line to lake.

10th. And all the switches, turnouts, turn-tables, connections, extra tracks, etc., used or belonging to any of the above lines.

This sale and transfer is made and accepted for and in consideration of the price and sum of one million four hundred thousand dollars, represented by fourteen thousand shares of the capital stock of the New Orleans City and Lake Railroad Company of the par value of one hundred dollars each, which have been delivered to the liquidating commissioners of the New Orleans City Rail-
8*aa* road Company, who, in the name of the stockholders thereof, grant full acquittance and discharge therefor to the present purchaser.

And in accordance with articles IV and V of its charter and as a further consideration of the sale herein made the said New Orleans City and Lake Railroad Company hereby assumes all the obligations and contracts of the said New Orleans City Railroad Company, whether the same relate to individuals, other private corporations, the city of New Orleans, or the State of Louisiana, and it binds itself, its successors and assigns, to fully discharge and execute same.

And it further obligates itself to pay and *and* liquidate all the bonded, judgment and floating debt of said New Orleans City Railroad Company, as hereinafter set forth.

1st. "Bonded debt," amounting to seven hundred thousand dollars, fully set forth and described in an act of mortgage, dated December 1st, 1879, granted by said company to Joseph A. Walker, before N. B. Trist, notary public in this city, and recorded in the mortgage office of this parish, in Book 176, folio 611; and said purchaser hereby binds itself, its successors and assigns, not to alienate nor encumber the property herein conveyed to the prejudice of said mortgage, which, as well as the contract amendatory thereof, passed before same notary on March 11th, 1880, is hereby expressly assumed; and in this connection said commissioners hereby transfer to said purchaser the deposit in the Canal bank of this city to the credit of said bonded debt, made in accordance with said contract, now amounting to the sum of twenty thousand two hundred and seventy-four dollars and eighty cents; and they also transfer all other cash of said New Orleans City Railroad Company, whether in bank or on hand, the receipt of which is hereby acknowledged by the representatives of the purchaser, and a statement of the amount thereof dispensed with.

2d. "Judgment debt."—"A." City of New Orleans *vs.* New Orleans City Railroad Company, No. 1247, division "C" of the civil district court for the parish of Orleans. Judgment for $11,239.20, with ten per cent. per annum interest from March 31st, 1881, and costs, being for city taxes for 1881 on the franchises of the company, assessed at $630,000.

8*bb* "B." William Mattle *vs.* New Orleans City Railroad Company *et al.*, No. 4596 of same court. Judgment for $1,000, with legal interest from December 1st, 1881, and costs, being for damages claimed for expulsion from car. Now pending on appeal in supreme court of Louisiana.

"C." Caroline M. Schiller *vs.* New Orleans City Railroad Company, No. 5877 of same court. Judgment for $2,691.16, with legal interest from April 27th, 1882, and costs, being for value of stock unlawfully transferred. Has been appealed, and propositions of compromise now pending.

"D." Ophelia E. Schiller, wife of W. H. Rolling *vs.* New Orleans City Railroad Company, No. 5874 of same court. Judgment for $1,269.33⅓, with nine per cent. back dividends and costs; similar to claim above. Propositions of compromise pending; possibility of appeal by plaintiff.

"E." Mary E. Schiller, wife of O. A. Fairex *vs.* New Orleans City Railroad Company, No. 8144 of same court; same judgment as above and in same condition.

3d. "Floating debt."—"A." Claim of City of New Orleans for taxes of 1882 on the franchises of the company, assessed at $630,000, amounting to twenty thousand and three dollars, with ten per cent. per annum interest from March 31st, 1882, till paid, and costs, as per suit No. 3548, division "B" of the civil district court for the parish of Orleans.

"B." Claim of Charles E. B. de La Bretonne and wife for twenty-five thousand dollars, resulting from injury to and death of minor child, as per suit No. 6842, division "B," civil district court for the parish of Orleans.

"C." Claim of Mrs. Mary Parish for ten thousand dollars, resulting from alleged injuries caused by premature starting of car, as per suit No. 8091, division "D," civil district court for the parish of Orleans.

"D." Claim of Crescent City Railroad Company for twenty-five thousand dollars damages, alleged to have been caused by the illegal issuance of an injunction, as per suit No. 8421, division "E," civil district court for the parish of Orleans.

(NOTE.—The above suits are now pending and undetermined, and in all of them the New Orleans Railroad Company, through
8cc its attorneys, filed proper defenses, and no liability is admitted to exist as to any of them, either by the present vendor or the present purchaser, it being the true meaning and intent of this assumption that the New Orleans City and Lake Railroad Company binds itself in no other manner than to satisfy whatever final judgments may be rendered in said suits against it by reason of its hereby becoming defendant therein.)

"E." And whatever "floating debt proper" said New Orleans City Railroad Company may have the present purchaser assumes and dispenses with a detailed statement thereof.

The said purchaser moreover binds itself to carry out all valid existing contracts for the employment or hire of all clerks and other agents, including the musicians engaged for the season at "West End," among whom is embraced Liberati, the cornetist.

The present purchaser is hereby subrogated to all the rights of said New Orleans City Railroad Company existing under any and all contracts heretofore made not herein specially mentioned (should

any such be omitted therefrom), and particularly as to the following two:

1st. Contract and agreement with the St. Charles Street Railroad Company for the use of its tracks and road-bed on Esplanade street, between Bourbon and Victory streets, in this city, as per act before W. J. Castell, notary in this city, May 23d, 1874.

2d. Contract and agreement with the Firemen's Charitable Association for a twenty-five years' lease, from January 1st, 1876, of that portion of Greenwood cemetery through which the West End trains now run, and fully described in the act of lease of same, passed before Wm. B. Kleinpeter, late notary in this city, February 8th, 1876.

All the obligations of the above acts are assumed by the present purchaser.

By reference to the annexed certificate of the register of conveyances in and for this parish and city, dated this day, it will appear that the real estate herein sold has not been previously alienated.

And by reference to the annexed certificate of the recorder of mortgages in and for this parish and city, dated May 28th, 1883, said real estate appears free of all encumbrances, except in-
8dd scriptions of the drainage privilege and the aforesaid mortgage of $700,000.

The purchaser assumes payment of any drainage tax that may be legally due and unpaid.

Proper tax receipts have been produced unto me, notary, showing the payment of all taxes due the State of Louisiana and the city of New Orleans, except those claimed by the latter for 1881 and 1882 on the assessed value of the franchises of the New Orleans City Railroad Company, which, subject to the qualifications above set forth, are assumed by the present purchaser, as are also all taxes exigible the current year and based upon the assessments made against the property herein sold as belonging to the New Orleans City Railroad Company.

And said New Orleans City Railroad Company, having, according to law, paid its State and city licenses for 1883, amounting to twenty-five hundred dollars each, hereby transfers the unexpired term thereof, extending to December 31st, 1883, to the present purchaser, the New Orleans City and Lake Railroad Company.

Thus done and passed in the presence of Joseph A. Dare and William S. Ingram, competent witnesses, both of this city, who hereto sign with said parties and me, the notary.

(Original signed)

ALBERT BALDWIN.
H. GALLY.
CHAS. E. BLACK.
I. L. LYONS.
B. W. TAYLOR.
R. M. O'BRIEN.
J. A. WALKER.
W. E. LEVERICH.
JOS. A. DARE.
W. S. INGRAM.
W. O. HART,
Notary Public.

I hereby certify the above and foregoing to be a true and correct copy of the original act, on file and of record in my office.

W. O. HART,
Notary Public.

See EXHIBIT "D."

Agreement with City of New Orleans.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this first day of the month of July, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and second, before me, Gustave Le Gardeur, Jr., a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Hon. Edward Pilsbury, mayor of the city of New Orleans, herein duly authorized in the full execution of these presents, under and by virtue of resolution No. 4566, administration series, adopted by the city council June 20th, 1878, a certified copy whereof is hereto annexed for reference.

And also came and appeared Frederick Wintz, of this city, herein acting as president of the New Orleans City Railroad Company, by virtue of a resolution adopted by the board of directors of the said company on the first day of July, 1878, a certified copy whereof is hereto annexed for reference, which said appearers, in their respective capacity and herein duly authorized as aforesaid, declared that they have covenanted and agreed, and do by these presents covenant and agree and bind the said city of New Orleans and the said railroad company, the one unto the other, as follows, to wit:

1°. The said New Orleans City Railroad Company, through its president aforesaid, does hereby agree and bind itself to reduce the fare on said road to fifteen cents for the round trip from its station at Canal street at the intersection of Carondelet and Bourbon streets to the New lake and return from and after the date hereof.

2°. The said railroad company, through its president aforesaid, hereby binds itself to cause to be built, at its own expense, a number of sheds on the levee at the New Lake end for the convenience of visitors; the number and character of the sheds to be determined hereafter.

[Endorsed:] Pamphlet "A," containing contract Oct. 2, 1879; contract June 5, 1885.

Affidavit.

The undersigned, Joseph A. Walker, being duly sworn, deposes and says that he is president of The New Orleans City and Lake Railroad Company, plaintiff herein, and that the facts and allegations set forth in the foregoing petition are true and correct.

(Signed) J. A. WALKER, *Pres't.*

Sworn to and subscribed before me this 5th day of August, 1891.
(Signed) E. A. LUMINAIS, *Clerk.*

Order.

Let an injunction issue herein as prayed for against the City of New Orleans and against Hon. Otto Thoman, city comptroller, restraining, enjoining, and prohibiting said city and its said comptroller from offering for sale and from selling or granting to any person or corporation any right of way, privilege, or franchise to build and construct tracks for street-railway purposes or business on Magazine street of this city from Canal street to Felicity street, and particularly enjoining and restraining said city and her said comptroller from taking any further steps, by publication or otherwise, or proceeding any further in the execution of ordinances Nos. 5137 and 5176, tending to a sale of a franchise or right of way for street railway, in so far as said ordinances purport to
9 tender for sale such a franchise or right of way on said Magazine street from Canal street to Felicity street, on petitioners giving bond, with good and solvent security, conditioned as the law directs, in the sum of ten thousand dollars.

New Orleans, August 5th, 1891.
(Signed) FRED. D. KING, *Judge.*

Bond of Injunction.

Filed August 5th, 1891.

Know all men by these presents that we, The New Orleans C. & Lake R. R. Co., as principal, and Jos. A. Walker, as surety, of the city of New Orleans and State of Louisiana, are held and firmly bound unto the city of New Orleans and Otto Thoman, city comptroller, to either severally or both, ten thousand dollars, lawful money of the United States of America, to be paid to said city of New Orleans or said Otto Thoman, comptroller, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, administrators firmly by these presents.

Sealed with our seals and dated this 5th day of August, in the year of our Lord 1891.

Whereas the said N. O. C. and Lake R. R. Co. has this day presented a petition to the honorable the civil district court for the parish of Orleans, praying for a writ of injunction:

Now, the condition of the above obligation is that we, the above-bound N. O. City and Lake R. R. Co. and Jos. A. Walker, will well and truly pay to the said city of New Orleans or Otto Thoman, comptroller, either or both, the defendants in said writ, all such damages as they or either of them may recover against us in
10 case it should be decided that the injunction was wrongfully obtained.

(Signed) JOS. A. WALKER, *Pres't.* [SEAL.]
JOS. A. WALKER, *Surety.* [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) W. O. HART.

Specifications for the Building of a Street Railroad According to Ordinances 5137, *C. S., and No.* 5176, *C. S., being Document Marked "B" Annexed to and Made Part of Petition.*

Filed August 5th, 1891.

Specification for the building of a street railroad according to ordinance- 5137, C. S., and No. 5176, C. S.

Accompanying these specifications is a map on which is indicated the route and character as to paving of the streets through which it runs.

The gauge shall be 5 feet 2 and $\frac{5}{8}$ inches commencing on Louisiana avenue at the corner of Constance street, there shall be a single track along the neutral ground on the south side of the track of N. O. Belt R. R. Co. with the Belt and new tracks not less than 12 feet from centers. Thence it shall run only — the upper roadway of Louisiana avenue on such line as will be given by the city engineer.

Thence down Dryades to Philip street—thence down Philip to Dryades. This *for* the track at the option of the lessee may be built — clear and sound red-cypress ties 6″ x 9″ x 9′. Three feet from centers, into which 5″ x 12″ stringers, 24 feet long of the same
11 material shall be joined 2″ *inches* and to which they shall be secured on both sides, at every intersection by cast knees with four (4) spikes each and tied together every ten feet with $\frac{1}{2}$-inch rods. On top of these shall be 5″ 50 lbs. step rail with $\frac{5}{16}$ x 3″ x 12″ bearing plates (sheet iron) under every joint—all this provided that whenever the street may be paved with gravel, stone or other material, the stringers and rails shall be taken up and replaced by the lessee during the paving, with a girder rail as hereinafter described—otherwise the girder rail, as hereinafter described shall be used in the original construction.

The space between the tracks, on the neutral ground shall be covered with perfectly clear and sound 3″ x 12″ hard yellow-pine plank.

When the track leaves the neutral ground, there shall be a bunting of 4″ x 6″ x 12″ Belgian blocks, of best quality of granite laid on the outer side of each rail 6″ deep, laid in a trench on a bed of concrete gravel 12″ wide, and thoroughly wetted and rammed, between rails may be covered as heretofore specified for that part on the neutral ground, provided that whenever the streets may be paved with gravel, stone or other material this planking shall be taken up, and replaced with a pavement similar to that on the street laid at the same time, unless it is gravel, in which case the paving between rails shall be Belgian blocks, laid as the city engineer at the time may direct.

From Philip street down Dryades, to St. Andrew, the center is now occupied by a track of the St. Charles Street railroad. In case the lessee of this franchise make no arrangement with the St. Charles Street R. R. Co. for the joint use of their track over this distance,

then they shall built their own track, and rebuild that of the
12 St. Charles R. R. Co. for this distance, under the foregoing specifications, to the satisfaction of the president of the said road as well as of the com. of pub. w'ks and city engineer.

The specifications for bunting and the removal of stringers in case of paving is to be obligatory on the lessee of the franchise for both roads. From St. Andrew down Dryades to Howard avenue there is a great pavement, except along the market. The center of part of Dryades street also occupied by a track of the St. Charles R. R. Co.

This track shall, as in the case *from* Dryades from Philip to St. Andrew, be also rebuilt to one side, so that midline between the St. Charles R. R. and the new track shall centre the street. This work shall be done under the following specifications.

The ties shall be as heretofore specified with a flange girder rail with a step top weighing not less than 78 lbs. to the yard. In this work the Johnson, Wharton or other modern system acceptable to the city engineer may be used. Whenever a girder rail is used the ties shall be selected of the best quality. The grade of the street and of both tracks shall be raised with the best quality of concrete paving gravel so as to give a crown of 15 feet to the street, and the bunting relaid in the most substantial manner.

From Dryades street the single-track route shall follow the lower side of Howard avenue to Lee circle. For the distance comprising one cobble and two dirt blocks a girder rail shall be laid under the foregoing specifications for that description of track including bunting outside of the rail and the best granite Belgian block between rails laid on 6″ of rammed gravel.

The road around the circle to St. Charles street shall also be laid on a girder rail as above specified. At St. Charles street it shall connect with the down track of the Crescent City road to
13 Canal and along Canal to Chartres street.

The road down Chartres to and across Esplanade shall also be laid with a girder rail and throughout this distance the square blocking shall be taken up and entirely renewed and reshaped where necessary to give a smooth surface and relayed diagonally after the general specifications of the city for such works. Thence down Chartres street to Spain the track shall be built of girder rail under the foregoing specification. There shall be a Belgian-block bunting, as heretofore specified on both sides of both rails, and in the balance of the space between tracks, the cobblestones shall be relaid, provided that wherever the street shall be paved with square stones between tracks shall be paved with the same material.

On Spain street from Chartres to Decatur the track shall be laid under the same specifications and conditions that apply to Louisiana avenue from St. Charles to Dryades street.

On Decatur street, from Spain to St. Ferdinand two tracks 4 feet apart shall be built, under the same specifications and conditions as Chartres street below Esplanade, for tracks and bunting and paving between tracks. This same construction shall be continued along St. Ferdinand to North Peters street.

Down North Peters street to Montegut shall be laid a double track with girder rail as before specified and at or about this point a suitable turn shall be built.

From the corner of Spain and Decatur street a single track shall be constructed up Decatur to Elysian Fields under the same specifications and conditions as apply to Chartres, below Esplanade street.

The center of Decatur street is occupied by a track of the St. Charles Str. R. R. The new track here shall be built under
14 the same specifications and conditions as apply to Chartres below Esplanade street provided further that the track of the St. Charles Street road be moved to one side and rebuilt in the same manner as the new track of the lessee of this franchise.

Throughout these two blocks it will be necessary to set a 3″ bluestone counter-curb on either side extending 6″ below the gutter bottom, to reduce the crown of the street, and widen the roadway. The construction across Esplanade street shall be same as that specified for the same street at the intersection of Chartres street.

A single track shall be constructed up Decatur from Esplanade to Ursulines street under the same specifications and conditions as apply to Chartres below Esplanade Str. At Ursulines a connection shall be made by arrangement between the lessee of this franchise and the Orleans R. R. Co. for the use of the track of the latter company up to their stand just below the head of Dumaine street. There *is* the single track under this franchise shall branch off and come to a line given by the city engineer on the river side of the tracks of the N. O. City and Lake R. R. on Decatur street, from thence up to and cross Canal street shall be built with a girder rail as hereinbefore specified. This construction shall be carried up Magazine street to Felicity, provided that the lessee of this franchise shall at his own expense run to a line given by the city engineer and reconstruct in a similar manner to the new track, the down-track of the N. O. City and Lake R. R. In this case as well as in all the others, where the lines of other road are interfered with, the work thereon shall be done without interference with their traffic and to the satisfaction of the president of such roads, under
15 these specifications as well as to that of the commissioner of public work and the city engineer.

A single track shall be constructed on Magazine from Felicity road to St. Mary up St. Mary to Constance, and up Constance to the starting point on Louisiana avenue under the same specifications and conditions as apply to Louisiana avenue from St. Charles to Dryades street.

The intersections of all railroads by the tracks under this franchise shall be reconstructed to the satisfaction of the presidents of the roads crossed as well as of the com. of pub. w'ks and city engineer. They shall have cast crossing with not more than four pieces, or not more than one joint between tracks, and arms extending at least 18 inches beyond tracks, all with perfectly firm foundations, and built in such a way as not to interfere with the traffic of the other roads. These crossings shall be maintained in such order as

to secure safe and easy passage during the term of this franchise by the lessee thereof.

All streets through which this road passes shall be restored to thorough order and maintained in this order, as hereafter specified during the term of the franchise and so turned over to the city at its expiration. On earth or dirt streets the excavations shall be refilled with the earth removed and thoroughly —. All holes in the road shall be cleaned out and when dry filled with the best river sand. It shall then be graded and surfaced with a road-scraper and kept in this condition by the use of the road-scraper and such additional filling as may be required to keep up the grade at all time and whenever called on by the com. of pub. w'ks.

On cobblestone streets whenever the stones are removed they shall be relaid on a bed of sand and relaid to a surface with thorough ramming, and the space between tracks and for a dis-
16 tance of three feet on both sides thereof shall be put in perfect order and so maintained during the term of this franchise to the satisfaction of the comm'r of pub. w'ks and city engineer including *of* all wear and settlement or other defect that may occur within the limits specified. On square-block streets, a line of blocks shall be laid longitudinally on both sides of the rails and all other blocks relaid diagonally. The blocks relaid will be on a sand bed 4″ thick and well rammed. All inequalities, holes, or other defects between rails or within three feet thereof shall be removed and this space put in thorough repairs and so kept for the term of this franchise, repairing all wear, settlement or other defect to the satisfaction of the comm'r of pub. w'ks and city engineer.

In the construction of the railroad the contractor shall comply with ordinances No. 621, C. S. and No. 7289, A. S.

The lessee of this franchise agrees and binds himself to put in order and maintain in order, as heretofore specified the streets through which the railroad is to pass, to the satisfaction of the comm'r of public w'ks and the city engineer and to do such work wherever ordered by either one of them.

In case of failures to do such work the lessee shall be taken to be in default from the mere fact of having be- so notified by said officers; and shall be taken and without further formality whatever, be obligated to the city for the specific performance of such work.

(Signed) B. M. HARROD,
City Engineer.

Ordinances Numbers 5137 *and* 5138, *Council Series, Being Documents Marked "C," Annexed to and Made Part of the Petition.*

17

Filed August 5th, 1891.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *March* 2, 1891.

An ordinance providing for the sale of the right of way for street-railway purposes over the streets hereinafter named, etc.

Be it ordained by the council of the city of New Orleans, That the comptroller be and he is hereby directed to advertise as required by law, for the sale at public auction, of the right of way for twenty-five years, for street-railway purposes over the following streets, viz:

Commencing at or near Canal and Chartres streets, thence down Chartres street to Elysian Fields street, along Elysian Fields street to Decatur street, thence on Decatur street to St. Ferdinand street, along St. Ferdinand street to North Peters, and along North Peters street to the depot of the New Orleans and Northeastern railroad, returning via North Peters St. Ferdinand, Decatur, Elysian Fields and Chartres streets, as above, to neutral ground of Esplanade street, thence along neutral ground of Esplanade street to Decatur street, along Decatur street to Ursulines street, using the tracks of the Orleans Railroad Company to Dumaine street, continuing up Decatur to Canal street, thence to Magazine street, thence along Magazine street to Felicity street, Felicity street to Old Magazine street, Old Magazine street to St. Mary, St. Mary street to Constance street, thence along Constance street to Louisiana avenue, along Louisiana avenue to Dryades street, thence on Dryades street to lower side of Delord street, along lower side of Delord street

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to Lee circle, to a connection with the tracks of the Crescent City railroad on St. Charles street, thence down St. Charles street over the tracks of the Crescent City railroad to Canal street, and thence along Canal street, using the trunk line of the Canal and Claiborne Street railroad to Chartres street or point of commencement.

Provided, that at the expiration of the franchise of the Levee and Barracks line, the said proposed line shall be extended to the lower limits of the city, through the following streets, to wit: On Peters street, from the N. O. and N. E. R. R. to Louisa, along Louisa to Chartres, along Chartres to Poland, along Poland to Peters, along Peters to lower limits of the city; from said point returning along Peters to Hancock, along Hancock to Dauphine, along Dauphine to Poland, along Poland to Royal, along Royal to Clouet, along Clouet to Peters, along Peters to N. O. and N. E. R. R. It being well understood that all present existing tracks on Peters, Dauphine, Poland, Royal and Chartres streets, used in this extension, shall be trunk lines, and proper and sufficient compensation shall be paid to the owners thereof, all in accordance with plans and specifications on file in the office of the city surveyor.

SEC. 2. Be it further ordained, etc., That the city surveyor be and he is hereby instructed to prepare plans and specifications in accordance herewith.

SEC. 3. Be it further ordained, etc., That the successful bidder shall have the option of using animals or electricity as a motive power; provided, however, the electrical motor shall be confined to the storage-battery system.

SEC. 4. Be it further ordained, etc., That the successful bidder shall be required to deposit with the comptroller in cash or certified check twenty per cent. of the amount of this bid immediately after adjudication.

19

Adopted by the council of the city of New Orleans Feb. 24, 1891.

EMILE J. O'BRIEN,
Assistant Clerk of Council.

Approved March 2, 1891.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

WRIGHT SCHAUMBURG,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *March* 3, 1891.

No. 5138, council series.

Resolved, That permission be, and is hereby, granted to Ben. W. Hope to erect and operate a fifty-horse-power steam engine on premises No. 60 Lafayette street. This privilege revocable at the pleasure of the council.

Adopted by the council of the city of New Orleans Feb. 24, 1891.

EMILE J. O'BRIEN,
Assistant Clerk of Council.

Approved Feb. 27, 1891.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

WRIGHT SCHAUMBURG,
Secretary to the Mayor.

Answer.

Filed October 23d, 1891.

20

NEW ORLEANS CITY & LAKE RAILROAD CO.
vs.
CITY OF NEW ORLEANS. } No. 33564.

Now into court comes the City of New Orleans, and for answer to the petition filed herein denies all and singular the allegations contained in the petition.

Wherefore defendant prays that there be judgment in its favor

dissolving the injunction issued herein and dismissing plaintiff's demand with costs.

(Signed) W. B. SOMMERVILLE,
Ass't City Att'y.

N. O., Oct. 22, '91.

Note of Evidence Taken in Open Court Before the Hon. F. A. Monroe, Judge, December 21st, 1891, in Behalf of Plaintiff.

Filed January 18th, 1892.

N. O. CITY & LAKE R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 33564.

Appearances: Buck, Dinkelspiel & Hart, for plaintiff; W. B. Sommerville, Esq., for defendant.

Plaintiff offers, introduces, and files in evidence the following documents and papers, to wit:

1. Printed contract of June 9th, 1883, executed before W.
21 O. Hart, notary public, purporting to be an act of sale and transfer of all rights, titles, and properties and franchises, &c., from the New Orleans City R. R. Co. to the New Orleans City & Lake R. R. Co.

2. Printed copy of notarial act between the City of New Orleans and the New Orleans City & Lake R. R. Co. passed before Gustave Le Gardeur, notary public, on the 2nd of October, 1879, contained in printed pamphlet marked "A."

It is agreed that these printed copies be received as true and correct copies without formal certification, and that in case of appeal the same shall be used in the printed form as part of the transcript without being copied therein.

It is agreed that the recitals of the ordinance of the city of New Orleans and all specifications and the official acts leading up to the final contract as contained in said contract be accepted in lieu of certified copies of the several and distinct ordinances without duplicating the same.

3. Document "B" annexed to the petition herein, purporting to be a copy of the specifications for the building of street railroads in accordance with ordinances 5137 and 5176, C. S.

Inasmuch as said copy is not certified, it is agreed that same shall be received as correct and may be considered in the record as such when attested by the comptroller of the city of New Orleans or other competent officer under him.

4. Printed copy of ordinance 5137, C. S., annexed to the petition herein as document "C," passed on the 24th of February, 1891, and approved by the mayor on March 2nd, 1891.

It is agreed that the printed copy so offered in evidence shall be accepted, official certificate of its correctness being waived.

5. Ordinance 5176, C. S.; same to be produced and filed
22 before argument of the case.

Mr. Buck offers and introduces map marked A. S.

Counsel for the city objects to said map on the grounds stated heretofore in objecting to other evidence offered by Mr. Buck.

Overruled as going to the effect and not the admissibility of said map.

To which ruling of the court council for the city excepts and reserves this note in lieu of a bill of exceptions.

(Here follows map marked p. 22*a*.)

Testimony and Note of Evidence Taken in Open Court January 11th, 1892.

Filed January 25th, 1892.

N. O. City & Lake Railroad Co. *vs.* City of New Orleans. } No. 33564.

Joseph A. Walker, sworn for the plaintiffs in the injunction, says:

Direct examination.

By Mr. Buck:

Q. You are the president of the New Orleans City & Lake Railroad Co.?

A. Yes, sir.

Q. Your company is in possession and *and* actively using all the rights and franchises from the city of New Orleans under the contract of October 2d, 1879?

A. Yes, sir.

Q. The City railroad?

A. Yes, sir; the New Orleans City Railroad Company.

23 Q. What tracks, if any, are you operating and running on Magazine street from Canal street—to what point?

A. They operate the tracks from Canal street on Magazine street up to Louisiana avenue.

Q. Is that a double or a single track?

A. That is a single track up to St. Andrew street.

Q. Is Felicity street below or above St. Andrew street?

A. Felicity street is below.

Q. Above there the track is a double track?

A. Right at the Market—at St. Andrew street—it doubles up.

Q. On what part of the street is your track laid—on the side or on the centre?

A. Where it is single?

Q. The single track.

A. [illegible] on the centre of the street where the crown is.

[illegible] fix the tracks of the street [illegible] of

levee to St. Charles street, inclusive? Just describe them, one by one.

A. From the levee to St. Charles street?

Q. Yes, sir.

A. Which side do you wish first—on the upper side?

Q. Commencing with the tracks running up and down town from Canal street parallel with the tracks of the Magazine line.

Counsel for the city of New Orleans objects upon the ground that it is incompetent and irrelevant.

Counsel, being asked what the object of the testimony is, states that, among other things already set up in this petition, *that*
24 the plaintiffs have the property right in the franchise on Magazine street, which, it asserts, cannot be impaired by the city, or if only under the exercise of the power of eminent domain and without compensation, in which event the purposes of the public which it will benefit, the conveyance would have to be shown, and the petition alleges that the franchise- sought to be created do not satisfy things in this condition and are not necessarily useful to the public.

Counsel for the city makes the objection above stated, the court sustains the objection, and counsel for the plaintiffs in the injunction reserves a bill of exceptions to the ruling of the court.

Cross-examined.

By Mr. SOMMERVILLE:

Q. How is the railroad track on Magazine street between Canal and Felicity streets operated? Does the car go up or down the street?

A. It comes down.

Q. Has it at any time or under any previous administration of this railroad gone up Magazine street?

A. No, sir; only from St. Andrew street.

Q. But between Canal and St. Mary streets?

A. No, sir.

Q. How does the proposed railroad contemplate going, up or down Magazine between Felicity and Canal streets?

A. They propose going up.

Q. Just in the opposite direction to the railroad that is now on that street?

A. Yes, sir.

25 Continued by preference for argument.

Submission.

Extract from the Minutes, January 25th, 1892.

Present: Honorable F. A. Monroe, judge.

NEW ORLEANS CITY AND LAKE R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 33564.

After hearing argument of Chas. F. Buck, Esqr., for the plaintiff, and of W. B. Sommerville, Esqr., for defendant, this case fixed for this day having been submitted, the court took same under advisement.

Opinion.

Filed February 9th, 1892.

NEW ORLEANS CITY & LAKE R. R. Co.
vs.
THE CITY OF NEW ORLEANS. } No. 33564.

It appears in this case that certain street-railroad franchise granted to the N. O. City R. R. Co. were to expire in 1880, and that in 1879 the city directed that they should be advertised for sale, the ordinance providing that—

"The terms of said sale shall be set forth in specifications to be drawn up by the administrator of commerce, with the approval of the council, and to be put on file in the office of the administrator of commerce as soon as practicable."

26 The advertisements published in conformity to the provisions of this ordinance stated that "pamphlet containing specifications of contract can be obtained on application to the administrator of commence," but contained no statement to the effect that the purchasers of the franchises were to obtain exclusive rights.

When the bids were opened that of the then holder, the N. O. City R. R. Co., was found to be the highest and was accepted, and the mayor was authorized to enter into and sign the necessary contract. As neither the bid nor the ordinance accepting it *are* in the record, I am unable to say whether they contained any reference to exclusive rights.

The contract as signed by the mayor, however, recited that—

"This sale is made and accepted in accordance with the specifications on file in the office of the administrator of commerce; which said specifications are in the words and figures following, to wit:

"Specifications concerning the sale of the rights of way and franchises for a term of years expiring on the first day of January, 1906, as per ordinance Nos. 4968 and 5030, administration series, hereunto annexed, of the following street railroads of the New Orleans City Railroad Co., to wit."

And then follow designations of the lines and of the streets through which said lines run, including among the latter Magazine street from Canal to St. Andrew.

Further on the specifications provide that, to quote the language—

"The City of New Orleans binds herself not to grant, during the period for which said franchise- are sold, a right of way to any other railroad company upon the streets through which said right of way is hereby sold, unless by mutual agreement between the
27 city and the purchaser or purchasers of these franchises." In 1883 the franchises thus acquired by the New Orleans City Railroad Co. were sold to its successor, the plaintiff in this suit, and later still, in 1891, the city advertised for sale certain other street-railway franchises, and among them the right to run up Magazine street from Canal to Felicity street, which plaintiff now claims conflicts with its exclusive right to run down said Magazine street from St. Andrew to Canal.

There is no affirmative evidence that the requirement of ordinance 4968, which directed the sale of the franchises of the New Orleans City Railroad Co. according to specifications "to be drawn up by the administrator of commerce, with the approval of the council," was ever complied with, in so far as the approval by the council of said specifications is concerned. If that approval is to be presumed from the facts that the bid of the New Orleans and City R. R. Co. was accepted by the council and the act of sale thereafter signed by the mayor, such a presumption must obtain, notwithstanding that the city was without legal authority to grant the exclusive privileges embodied in said specifications, for an examination of the city charter fails to disclose any clause whereby such power is conferred. This was the conclusion of the circuit court of the United States in the case of The "New Orleans City R. R. Co. *vs.* Crescent City R. R. Co.," reported in XII Federal Rept., 308, when Pardee, J., deciding the case, said:

"The City of New Orleans had no power under its charter and the laws of Louisiana to grant the New Orleans City Railroad Company the exclusive and sole right to the use of public streets of the city for a street railroad." The same doctrine was held by the supreme court of this State in the case of Railroad Co. *vs.* Railroad Co., 41 A., 564, where it was said:

28 "The city council is without the power to grant the exclusive use of a street which belongs to the public to a railway company. It cannot thus deprive succeeding councils of the power of performing the duty of regulating the streets as may seem to them to be for the best interest of the public." See also R. R. Co. *vs.* R. R. Co., No. 10887, docket sup. ct. In Cook on Stockholders and Corporations, sec. 676, the author, in speaking of legislative power with respect to monopolies, says:

"It is clearly settled that a municipal corporation cannot legally make such a grant unless its charter expressly authorizes it to do so."

The Messrs. Elliott in their work on Roads & Streets, p. 566, say:

"There is some conflict in the decided cases upon the question of the power of the legislature to grant an exclusive right to a street-railway company to occupy and use a highway. The weight of authority is that the legislature cannot create a monopoly by granting an exclusive privilege, and this we regard as the sound doctrine."

"P. 568.—There is, however, a line which the legislature cannot pass. It cannot make an exclusive grant as against common right when the thing granted is not inherently exclusive."

In granting the right to use a highway for a street railway the legislature makes that lawful which but for the grant would be unlawful, for no citizen has a right to use a highway in any other than the usual mode except when the legislature authorizes him to do so. But, as we have indicated, we do not believe that the doctrine we have stated can legitimately be pressed so far as to authorize the legislature to confer an exclusive privilege to reap all the profits of transporting passengers except in cases where necessity
produces that result, as it may sometimes do, as, for in-
29 stance, when it is impossible to operate more than one railway upon the same street."

That a franchise to construct and operate a street railway is property there can be no doubt, and where such franchise has been legally granted by competent authority it may well be that the grantee cannot be deprived of his property without previous compensation and in the exercise of the power of eminent domain. Where, however, it appears that the grantee has no title to the franchise for the reason that his grantor was legally incapable of conferring such title upon him, the rule does not apply, and there is nothing to prevent the lawful owner of the franchise from taking possession and using or of prohibiting its use to the unlawful claimant.

It is true that in some cases, when a contract *ultra vires* of a corporation has been executed by the other party, the corporation may be compelled to perform its part, but the instant case is not one of them, since the maintenance of an unlawful monopoly would be against that public policy which alone could be invoked. A remedy was indicated to the plaintiff's predecessor by the judge of the circuit court of the U. S. in a case which has been cited. Whether it will prove adequate I am not in a position nor do I feel called on to determine. It is sufficient that the remedy here sought cannot be allowed and that plaintiff's demand must therefore be rejected, and this suit should therefore be dismissed at the cost of the plaintiffs.

Judgment.

NEW ORLEANS CITY AND LAKE RAILROAD COMPANY
vs.
CITY OF NEW ORLEANS. } No. 33564.

30 For the reason assigned in the written opinion of the court on this day delivered and filed—

It is ordered, adjudged, and decreed that there be judgment in

favor of the defendant, The City of New Orleans, rejecting the demand of the plaintiff and dismissing this suit at its cost.

Judgment rendered February 9th, 1892.

Judgment signed February 26th, 1892.

(Signed) F. A. MONROE, *Judge.*

Rule for New Trial.

Filed February 15th, 1892.

NEW ORLEANS CITY & LAKE R. R. Co. *vs.* CITY OF NEW ORLEANS *et als.* } No. 33564.

On motion of Buck, Dinkelspiel & Hart, attorneys for the plaintiff—

It is ordered by the court that the defendant, The City of New Orleans, do show cause on Friday, February 19th, 1892, at 11 o'clock a. m., why a new trial should not be granted herein on the following grounds:

1. That the judgment is contrary to the law and the evidence.

2. That since the trial of this cause mover has discovered new evidence, necessary and material, which it could not discover before, though it had used due diligence to that end, the said new evidence consisting of the fact that the sale enjoined in this case was not advertised according to law, and therefore illegal.

Affidavit.

Joseph A. Walker, being duly sworn, does depose and say that he is president of the New Orleans City & Lake Railroad Com-
31 pany, and that the foregoing allegations are true and correct.

(Signed) J. A. WALKER, *President.*

Sworn to and subscribed before me this February 12th, 1892.

(Signed) W. O. HART, *Not. Pub.*

Rule — New Trial Refused.

Extract from the Minutes of February 26, '92.

Present: Hon. F. A. Monroe, judge.

NEW ORLEANS CITY AND LAKE R. R. Co. *vs.* CITY OF NEW ORLEANS. } No. 33564.

In this case, after hearing pleadings and argument of Chas. F. Buck, Esqr., for plaintiff, and of W. B. Sommerville, Esqr., for defendant, and for the reasons orally assigned, the court considering the law to be with defendant and against plaintiff—

It is ordered that plaintiff's rule be discharged and its application for a new trial is refused at its cost.

Motion of Appeal.

Extract from the Minutes of March 8, '92.

Present: Hon. F. A. Monroe, judge.

NEW ORLEANS CITY AND LAKE R. R. Co.
vs.
CITY OF NEW ORLEANS. } No. 33564.

On motion of Buck, Dinkelspiel & Hart, attorneys for the
32 plaintiffs, and on suggesting to the court that it is informed and verily believes there is error to its prejudice in the final judgment herein rendered against it and in favor of the defendants, and that it desires to appeal therefrom—

It is ordered by the court that mover be allowed an appeal from said judgment, returnable to the honorable the supreme court of the State of Louisiana on the third Monday of March, 1892, upon its furnishing bond in the sum of two hundred ($200.00) dollars, conditioned according to law.

Bond for Appeal.

Filed March 9th, 1892.

Know all men by these presents that we, New Orleans City and Lake Railroad Company, as principal, and Joseph A. Walker, as surety, are held and firmly bound unto E. A. Luminais, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, assigns, in the sum of two hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal and dated in the city of New Orleans on this ninth day of March, in the year of our Lord one thousand eight hundred and ninety-two.

Where*fore* the above-bounden New Orleans City and Lake Railroad Company has filed a motion of appeal from a final judgment rendered against it in the suit of New Orleans City and Lake Railroad Company *vs.* City of New Orleans *et als.*, No. 33564 of the civil district court for the parish of Orleans, on the 9th day of February, 1892, and signed on the 26th day of February, 1892:

Now, the condition of the above obligation is such that the above-bound New Orleans City and Lake Railroad Company shall prosecute said appeal and shall satisfy whatever judgment may be
33 rendered against it or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise that the said Joseph A. Walker, surety, shall be liable in its place.

(Signed) J. A. WALKER, *Pres't.*
J. A. WALKER.

Signed, sealed, and delivered in the presence of—
W. O. HART.

Certificate.

STATE OF LOUISIANA, }
Civil District Court for the Parish of Orleans. }

I, Edgar A. Luminais, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing forty-one pages do contain a true, correct, and complete transcript of all the proceedings had, documents filed, testimony and evidence adduced upon the trial of the cause wherein New Orleans City & Lake R. R. Co. is plaintiff and City of New Orleans is defendant, instituted in this court and now in the records thereof under the No. 33564.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this 19th day of March, in the year of our Lord one thousand eight hundred and ninety-two, and in the one hundred and sixteenth year of the Independence of the United States of America.

[SEAL.] (Signed) E. A. LUMINAIS, *Clerk.*

34 *Printed Copy of Ordinance No. 5176, C. S., Attached to Transcript.*

(Stamps.) MAYORALTY OF NEW ORLEANS,
CITY HALL, *March* 12, 1891.

No. 5176, council series.

An ordinance to supplement, amend, and carry into effect the provision of ordinance 5137, C. S., for the sale of a right of way for street-railway purposes as therein set forth.

SECTION 1. Be it ordained, etc., That the street railway to be constructed under ordinance 5137, C. S., be and is hereby required to be begun within four months from the date of adjudication of the franchise, rights and privileges in said ordinance referred to; and that the railway must be completed within twelve months after commencement of the work, provided that no delays occasioned by legal proceedings interrupting said work, shall be counted as part of that term.

SEC. 2. Be it further ordained, That there be substituted for the word "surveyor," that being the last word in section 1 of ordinance 5137, C. S., the word "engineer."

SEC. 3. Be it further ordained, That there be substituted for the word "surveyor," that being the fourth word in section 2 of ordinance 5137, C. S., the word "engineer." And that section 2 of ordinance 5137, C. S., be otherwise amended by adding to the same the following:

"And such plans and specifications shall form part of the contract, which the mayor is hereby directed to proceed to execute immediately in behalf of the city of New Orleans before the city notary with the adjudicatee."

SEC. 4. Be it further ordained, That section 4 of ordinance 5137,

C. S., be and the same is hereby repealed, and that there be substituted therefor the following:

35 "Be it further ordained, That the successful bidder shall pay to the comptroller in cash or by certified check the amount of his bid, immediately upon adjudication."

SEC. 5. Be it further ordained, That the adjudicatee shall annually pay into the city treasury, upon the assessed value of said road and fixtures, the annual tax levied upon real estate, together with license taxes upon railroads, on the value of said road and fixtures to be assessed by the usual mode of assessment.

SEC. 6. Be it further ordained, That the said railroads, cars, fixtures and other appurtenances shall revert to the city at the expiration of the said twenty-five years' privilege, on a valuation to be ascertained by two disinterested persons, one to be appointed by the purchaser or purchasers, and the other by the city; and in the event of a disagreement as to said valuation between said persons, a third party or umpire shall be appointed by one of the judges of the civil district court, the decision thereby had to be final.

SEC. 7. Be it further ordained, That the city engineer be and that he is hereby required to adopt the plans and specifications called for in ordinance 5137, C. S., to the provisions of this ordinance as supplementing and amending ordinance 5137, C. S.; and that the comptroller be and he is hereby required to proceed in accordance with ordinance 5137, C. S., as thus supplemented and amended, and to advertise and adjudicate accordingly.

SEC. 8. Be it further ordained, That failure on the part of the adjudicatee to comply with the terms and conditions of ordinance 5137, C. S, as supplemented and amended by this ordinance, shall operate of itself and without a putting in default, forfeiture on their part of their franchise, rights and privileges.

Adopted by the council of the city of New Orleans, March 10, 1891. Approved March 11, 1891.

EMILE J. O'BRIEN,
Assistant Clerk of Council.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

WRIGHT SCHAUMBURG,
Secretary to the Mayor.

36 *Proceedings Had in the Supreme Court of the State of Louisiana on the Appeal Taken by the Plaintiffs in the Case of the—*

NEW ORLEANS CITY AND LAKE RAILROAD CO.
vs.
CITY OF NEW ORLEANS. } No. 11032.

Transcript of appeal. Filed March 24, 1892.

Cause Heard and Submitted.

Extract from the Minutes.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, FRIDAY, *April* 22, 1892.

The court was duly opened pursuant to adjournment.

Present: Their honors Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, associate justices.

Absent: Edward Bermudez, chief justice.

NEW ORLEANS CITY & LAKE RAILROAD COMPANY
v.
THE CITY OF NEW ORLEANS. } No. 11032.

This cause came on this day to be heard and was argued by counsel. Mr. Charles F. Buck opened for the plaintiff, appellant; Mr. Walter B. Sommerville, assistant city attorney, replied for the defendant, appellee; whereupon the court took the cause
37 under advisement upon the briefs now on file.

Ordinance No. 5176, C. S. Filed April 28, 1892. Copied at page 34 of this Transcript.

Agreement in Reference to Ordinance No. 5176, *C. S.*

Filed April 28, 1892.

Supreme Court.

NEW ORLEANS CITY & LAKE R. R. CO.
vs.
CITY OF NEW ORLEANS. } No. 11032.

It is agreed that the above ordinance shall be made part of the record herein in the place of ordinance No. 5138, C. S., found on pp. 22 & 23 of the Transcript.

(Signed) W. B. SOMMERVILLE,
Ass't City Att'y.

Note by clerk supreme court:

(Said ordinance No. 5138, C. S., is copied at page 19 of this Transcript.)

Opinion of Court. Filed May 9, 1892.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *May 9th*, 1892.

The court was duly opened pursuant to adjournment.

Present: Their honors Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, associate justices.

Absent: Edward Bermudez, chief justice.

His honor the presiding justice pronounced the opinion and judgment of the court in the following case:

NEW ORLEANS CITY & LAKE RAILROAD COMPANY
v.
THE CITY OF NEW ORLEANS. No. 11032.

38 Appeal from the civil district court for the parish of Orleans.

This is a suit by injunction to prevent the city from selling a right of way for a street railroad over a certain portion of Magazine street, the plaintiff claiming that the proposed sale violates the following stipulation in the subsisting contract between it and the city:

"The City of New Orleans binds herself not to grant, during the period for which said franchises are sold, a right of way to any other railroad company upon the streets through which said right of way is hereby sold, unless by mutual agreement between the city and the purchaser or purchasers of these franchises."

It cannot be denied that the action sought to be restrained is in violation of the terms of this quoted clause of the contract. Whether the plaintiff is entitled to any, and, if so, to what relief, on account of such violation, are questions which we shall not discuss in the present opinion.

It is sufficient to say that plaintiff is clearly not entitled to the particular relief invoked in this case.

We have repeatedly held that the city council of New Orleans has no power to grant an exclusive right to use a street for the purposes of a street railway, and that any such exclusive grant cannot operate to deprive succeeding councils of the right and power to regulate the streets by granting new franchises when deemed necessary for the public convenience and when not inconsistent with or destructive of the exercise of franchises formerly granted.

The proposed sale does not interfere with the exercise of the franchise granted to plaintiff, save in the single feature of its exclusiveness.

39 If the city council, with which plaintiff contracted, had no power to grant an exclusive right or to deprive succeeding councils of the rights to grant new franchises in the public interest,

obviously plaintiff's claim to an injunction restraining the granting of such new franchises cannot be sustained, even if it were conceded that plaintiff was entitled to some kind of relief for the consequent breach of its contract.

We do not understand that the learned counsel of plaintiff contests the logic of this conclusion, but with great earnestness and zeal he assails the correctness of the judicial conclusion which we have repeatedly announced, that the city council of New Orleans has no power to grant or sell *in perpetuo* or for a term of years the exclusive right to use its streets for the purposes of a street railway.

New Orleans City & Lake Railroad Company *vs.* City of New Orleans, 44 Annual (decided April 18th, 1892).

Canal & Claiborne St. Railroad Company *v.* Crescent City Railroad Company, 44 Annual (decided April 4th, 1892).

Canal & Claiborne St. Railroad Company *v.* Orleans Railroad Company, 44 Annual.

Canal & Claiborne St. Railroad Company *v.* Crescent City Railroad Company, 41 Annual, 561.

New Orleans City Railroad Company *v.* Crescent City Railroad Co., 12 Fed. R., 308.

He claims that this is the first case which has been presented in which the grant of the exclusive right has been expressly made as a stipulation and condition of a contract, and that it is thus differenced from prior cases.

In the case first above cited (which, however, is not yet final) we had under consideration the very contract now pre-
40 sented, and we then held, in the language of the syllabus:

"The charter of the city of New Orleans, act No. 7 of 1870, did not confer power upon the corporation to grant the exclusive privilege of the use of a street.

"The power conferred was restricted to the regulation and management of the streets."

We have, however, carefully considered the plaintiff's argument, which, reduced to the form of a syllogism, is as follows:

1. In absence of constitutional inhibition, which did not exist at date of this contract, the legislature of the State had the power to grant exclusive rights to the use of a street for a street railway.

2. The legislature of Louisiana has delegated to the city of New Orleans its whole powers over this subject; *ergo* the city has power to grant such exclusive rights.

In support of the major premiss counsel cites a formidable array of authorities. We have no occasion to consider these or to enter into the nice distinctions in the definition and limitation of the legislative power on this subject which appear in the decisions and text books, because the doctrine heretofore announced by us rests entirely on our negation of the minor premiss.

The grant of power to the city council in this matter, under the charter of 1870, in force at the date of this contract, is found in section 12, as follows:

"To regulate and make improvements in the streets; * * *

to regulate the proper government of carts, drays, carriages, omnibuses, and other vehicles of every description, locomotives, passenger and street cars which run in the streets and within the limits of the city." * * *

We have been referred to and have ourselves been able to
41 find no authority holding that such a grant included a delegation of power to grant an exclusive right of way over streets to a railway company.

The power to "regulate the streets" is a persisting power, not exhausted by a single exercise thereof.

The case of Brown *v.* Duplessis, 14 Annual, 854, held that it was a proper exercise of this power of regulation for the city to authorize street railways to be established on the streets. If one council, under this power to regulate, had the right to establish such a railway, it is difficult to understand why a succeeding council, having precisely the same power, should not have the right to establish a similar railroad when found necessary in the public interest, and provided always it did not destroy or impair substance of the former grant.

The legislative grant to the city of New Orleans of the power to establish street railways is subject to the same construction which would be applied to a direct legislative grant to a private corporation for the same purpose, and as to the latter Judge Dillon says: "A legislative grant of authority to construct a street railway is not exclusive unless so declared in terms, and therefore the legislature may at will and without compensation to the first company authorize a second railway on the same streets or line unless it has disabled itself by making the first grant irrepealable and exclusive."

2 Dillon Municipal Corporation, 3rd edition, paragraph 727.

The same principle must be applied in the construction of legislative delegations of authority to municipal corporations. Unless the terms of the delegation embrace expressly the power to grant exclusive rights or are so sweeping as to operate a complete abdi-
42 cation of the whole legislative power in favor of the corporation, it cannot be held to include such extraordinary power, the possession of which, even by the legislature, is not free from dispute.

See Elliott on Roads and Streets, page 569.

The extremely general, guarded, and cautious terms of the delegation in the instant case preclude any such construction and produce a strong conviction that no such purpose was contemplated by the legislative mind.

The most apposite case we have found is that of Davis *v.* Mayor, 14 New York, 536, of which we give Judge Dillon's summary as follows:

"In a leading case, Davis *v.* Mayor, it appears that the city corporation, by its charter, possessed general power to open, alter, repair, and regulate the streets. By virtue of this power and without any express authority from the legislature the corporation of the

city undertook, by resolution, to confer upon an association of persons the exclusive right to construct and maintain for a term of years a railway in Broadway for the transportation of passengers for profits.

"It was the opinion of five of the seven judges of the court of appeals that the resolution was void. * * *

"The judgment of the court in the case mentioned rests upon the sound principle that the powers of the corporation in respect to the control of its streets are held in trust for the public benefit and cannot be surrendered or delegated by contract to private parties."

2 Dillon Municipal Corporation, paragraphs 715, 716.

The later case of People *v.* O'Brien, 111 New York, page 1, does not overrule or conflict with David *v.* Mayor, but is clearly distinguishable from it in the essential feature that an exclusive
43 grant was not involved.

A different conclusion from that which we have reached would be nothing less than a public calamity.

Under the conditions of life in great cities experience demonstrates that the power of regulating the use of streets in the establishment of railways thereon is one of the most important and essential of all municipal powers to the comfort, convenience, and health of the inhabitants. Such railways relieve the unwholesome crowding of population in central localities, abolish the nuisance of overpopulated tenement-houses, enable the industrial classes to find homes where land is cheap, space is ample, and air is pure, from which these carriers supply swift and frequent transportation to and from their working places, and contribute in so many ways to the comfort and convenience of the whole people that one wonders how such communities ever lived without them.

Whilst valid contract rights must be respected or only interfered with in the constitutional exercise of the power of eminent domain, claims to exclusive privileges, under grants which are *ultra vires*, cannot be permitted to thwart or obstruct the municipal discretion in the administration of this important public trust confided to them to be exercised for the benefit of the people.

Judgment affirmed.

Judgment.

Extract from the Minutes.

NEW ORLEANS, MONDAY, *May 9th*, 1892.

The court was duly opened pursuant to adjournment.

Present: Their honors Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, associate justices.

Absent: Edward Bermudez, chief justice.

44 His honor the presiding justice pronounced the opinion and judgment of the court in the following case:

NEW ORLEANS CITY & LAKE RAILROAD COMPANY
v.
THE CITY OF NEW ORLEANS. } No. 11032.

Appeal from the civil district court for the parish of Orleans.

Judgment affirmed.

Petition for Writ of Error.

Filed June 3, 1892.

Supreme Court of Louisiana.

NEW ORLEANS CITY & LAKE R. R. Co.
vs.
THE CITY OF NEW ORLEANS. } No. 11032.

To the honorable the chief justice of the supreme court of the State of Louisiana:

The petition of The New Orleans City & Lake Railroad Company, the plaintiff and appellant in the above-entitled cause and cast in the final decree of this honorable court, respectfully represents—

That it is informed and believes there is error to its prejudice in the final judgment herein rendered between the said plaintiff, your petitioner, and the City of New Orleans, and petitioner is desirous of obtaining and prosecuting a writ of error to remove said judgment to the honorable the Supreme Court of the United States,
45 which is vested with jurisdiction over this cause by reason of the fact that there was drawn in question in the case the validity of certain ordinances, particularly ordinance 5137, adopted by the common council of the city of New Orleans on March 2nd, 1891, passed in the exercise of its sovereign and legislative function, in reference to the subject-matter embraced in this litigation, and which ordinance is alleged to be in violation of solemn contract obligations entered into between this petitioner and the City of New Orleans on the second day of October, 1879, which contract was in accordance with and the result of a legislative action authorized by the legislature of the State and the constitution of the State of Louisiana.

That the ordinance above referred to, passed by the said common council of the city of New Orleans *was* sought to be enforced in the manner as in this petitioner's original petition in this cause set forth, is alleged to impair the obligation of said contract and is in conflict with and direct violation of the Constitution of the United States, and particularly of paragraph one (1) of section ten (10) of said Constitution, and, further, in conflict with and violation of paragraph "one" (1) of the fourteenth amendment of said Constitution of the United States, to the effect that "no one shall be deprived of life, liberty, or property except upon due process of law," both of which provisions of said Constitution were expressly invoked by petitioner in the protection of its rights under its said con-

tract with the City of New Orleans, as fully set forth in its original petition in this cause.

Wherefore petitioner prays that a writ of error be allowed to it from the final judgment and decree of this honorable court, and that same be made returnable to the honorable the Supreme Court of the United States at its next term, according to law, without supersedeas, upon petitioner giving bond in such sum as
46 the court may fix.

And this petitioner further prays that the City of New Orleans, through its mayor, may be cited to answer said writ of error in accordance with law and practice in such cases made and provided.

And, as in duty bound, petitioner will ever pray, etc.

(Signed) BUCK, DINKELSPIEL & HART, *Att'ys.*

Chas. F. Buck, member of Buck, Dinkelspiel & Hart, attorneys, duly sworn, deposes and says that all and singular the facts and allegations set forth are true to the best of his opinion, knowledge, and belief.

(Signed) CHAS. F. BUCK.

Sworn to before me this May 26, '92.

[L. S.] (Signed) W. O. HART, *Not. Pub.*

Order.

It is ordered that the plaintiffs, The New Orleans City and Lake Railroad Company, be allowed a writ of error, as within prayed for, to the Supreme Court of the United States, returnable thirty days from the date hereof, on the said plaintiffs giving bond, with good and solvent security, conditioned as the law directs, in the sum of two hundred and fifty dollars.

New Orleans, May 31, 1892.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice of Louisiana.

47 *Bond for Writ of Error.*

Filed June 11, 1892.

Know all men by these presents that we, the New Orleans City & Lake R. R. Co., as principal, and Jos. A. Walker, as surety, are held and firmly bound unto the City of New Orleans in the full and just sum of two hundred and fifty dollars, to be paid to the said City of New Orleans, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eight day of June, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a supreme court of the State of Louisiana, holding sessions in and for the State of Louisiana, at New Orleans, La.,

in a suit depending in said court wherein The N. O. City & Lake R. R. Co. was plaintiff and The City of New Orleans defendant, judgment was rendered against the said plaintiff, The N. O. C. & L. R. R. Co., and in favor of said defendant, and the said plaintiff, The N. O. C. & L. R. R. Company, having obtained a writ of error and filed a copy thereof in the clerk's office of the said Supreme Court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of New Orleans, citing and admonishing her to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next or otherwise as the law and order of court direct:

Now, the condition of the above obligation is such that if the said New Orleans City & Lake R. R. Co. shall prosecute her writ to effect and answer all damages and cost if she fail to make her plea good, then the above obligation to be void; else to remain
48 in full force and virtue.

(Signed) J. A. WALKER, *Pres't.* [L. S.]
J. A. WALKER. [L. S.]

Approved June 11, 1892.
(Signed) FRANCIS T. NICHOLLS,
Chief Justice of Louisiana.

UNITED STATES OF AMERICA,
State of Louisiana, } *ss:*

Personally appeared Jos. A. Walker, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans and is worth the full sum of two hundred and fifty dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) J. A. WALKER.

Subscribed and sworn before me this 8 day of June, 1892.
[SEAL.] (Signed) W. O. HART, *Not. Pub.*

Letter & Agreement Regarding Original Documents.

Filed June 16, 1892.

NEW ORLEANS, *June 13th*, 1892.

Hon. E. A. O'Sullivan, city attorney.

DEAR SIR: In the case of The N. O. City & Lake R. R. Co. *vs.* The City of New Orleans, lately decided by the supreme court in favor of the city, the New Orleans C. & L. R. R. Co. has
49 taken a writ of error to the Supreme Court of the United States and the transcript is now being made by the clerk of the supreme court.

There is on file as part of the record a printed pamphlet containing some of the contracts offered in evidence in the lower court, particularly the charter of the New Orleans City & Lake R. R. Co. and the act of sale or transfer from the New Orleans City Railroad Company to the New Orleans City & Lake R. R. Co., and more especially

a notarial act of date October 2nd, 1879, between the City of New Orleans and the N. O. C. & L. R. R. Co. by which the company acquired the franchises now operated by it.

Mr. Summerville had charge of this case.

The object of this note is to ascertain whether you would not consent to an agreement that these contracts on file in print be taken to the Supreme Court of the United States in that form and not copied into the transcript.

Will you kindly inform me whether you can make such a consent or to which one, if any, of the assistant city attorneys I shall apply for the purpose of having the proper agreement signed?

Awaiting your reply, I remain very respectfully yours, etc.,

(Signed) CHAS. F. BUCK.

(Dictated.)

Charles F. Buck, Esq.

DEAR SIR: I hereby consent, in the matter of The N. O. C. & L. R. R. Co. *vs.* The City of New Orleans, which is now on a writ of error to the Supreme Court of the United States, that a printed pamphlet of the charter of the N. O. C. & L. R. R. Co. and the act of sale or transfer from the New Orleans City R. R. Co. to the New Orleans City & Lake R. R. Co. and the notarial act of October 2nd, 1879, between The City of New Orleans and the N. O. C. & L. R. R. Co. be used in the transcript, as proposed by the above letter from Charles F. Buck, Esq.

Respectfully,

(Signed) E. A. O'SULLIVAN, *City Attorney.*

(Signed) BUCK, DINKELSPIEL & HART,

pp. C. F. BUCK, *For Pl'ff in Error.*

50 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, at New Orleans, do hereby certify that the foregoing forty-nine pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein The New Orleans City and Lake Railroad Company were plaintiffs and The City of New Orleans was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiffs, which appeal is now on the files thereof under No. 11032.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 27th day of June, anno Domini 1892, and in the one hundred and sixteenth year of the Independence of the United States of America.

T. McC. HYMAN, *Clerk.*

51 UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Lynn Boyd Watkins, associate and presiding justice of the supreme court of the State of Louisiana, do hereby certify that Francis Tillou Nicholls, chief justice of this court, is now absent from the city of New Orleans; that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana, at New Orleans; that the signature of Thomas McCabe Hyman to the foregoing certificate in the case of "The New Orleans City and Lake Railroad Company *vs.* The City of New Orleans, No. 11032" on the docket of this court, is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this twenty-eighth day of June, anno Domini one thousand eight hundred and ninety-two.

[Seal Supreme Court of the State of Louisiana.]

L. B. WATKINS,
Presiding Justice.

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the chief justice and the associate justices of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said case of The "New Orleans City and Lake Railroad Company *vs.* The City of New Orleans," No. 11032 of the docket of said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The New Orleans City & Lake R. R. Co., pl'ff, and The City of New Orleans, defendant, No. 11032 of the docket of said supreme court of Louisiana, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or

53 statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said New Orleans City & Lake R. R. Co., as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy

justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 3d day of June, in the year of our Lord one thousand eight hundred and ninety-two.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

Allowed by—

FRANCIS T. NICHOLLS.

54 [Endorsed:] No. 11032. New Orleans City and Lake Railroad Co. *versus* City of New Orleans. Writ of error. Supreme court of Louisiana. Filed June 3, 1892. T. McC. Hyman, clerk.

55 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the City of New Orleans, through its mayor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein The New Orleans City and Lake Railroad Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said New Orleans City and Lake Railroad Company, as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the State of Louisiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3rd day of June, in the year of our Lord one thousand eight hundred and ninety-two.

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

56 [Endorsed:] For service. Serve on the City of New Orleans, through its mayor. Personal. June 7. Supreme Court of the State of Louisiana. No. 11032. New Orleans City & Lake Railroad Co. *vs.* The City of New Orleans. Citation. Supreme court of La. Filed 7 June, 1892. T. McC. Hyman, clerk.

Sheriff's Return.

Received Monday, Jun- 6, 1892, and on the seventh day of June, 1892, I served a copy of the within citation on The City of New Orleans, defendant herein, by personal service on John Fitzpatrick, its mayor.

Returned same day.

JAMES DUIGNAN,
Deputy Sheriff, Parish of Orleans, State of Louisiana.

James Duignan, deputy sheriff, parish of Orleans, State of Louisiana, being duly sworn, deposes and says that the facts set forth in the foregoing return of service of citation in writ of error are true and correct, so help him God.

JAMES DUIGNAN,
D'p'ty Sheriff.

Sworn to and subscribed before me this 7th day of June, A. D. 1892.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN,
Clerk Supreme Court, State of Louisiana, at New Orleans.

Endorsed on cover: Case No. 15,079. Louisiana supreme court. Term No., 133. The New Orleans City and Lake Railroad Company, plaintiff in error, *vs.* The City of New Orleans. Filed July 9, 1892.